* Together with Landis et al v. American Water Works & Electric Company, Incorporated No. 222

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 221

JAMES M. LANDIS, ET AL., PETITIONERS

vs.

THE NORTH AMERICAN COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JULY 24, 1936

CERTIORARI GRANTED OCTOBER 12, 1936

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

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INDEX

	Original	print
Proceedings in United St ourt of Appeals for District of Columbia	1	1
Caption [omitted in printing]	1	1
Record from Supreme Court of District of Columbia	1	1
Caption [omitted in printing]	1	1
Bill of complaint	2	1
Motion to stay proceedings	32	24
Answer to motion for stay, etc	34	25
Opinion, Bailey, J., on motion for stay	42	31
Order staying further proceedings	47	35
Order allowing special appeal	47	36
Notice of motion	48	36
Motion to include affidavit and exhibits thereto in printed transcript of record	48	37
Affidavit of Homer Cummings	49	38
Exhibit A—Holding Company Act, rule 4	54	41
Exhibit B—Circular No. 2789	55	42
Exhibit C—Circular No. 2786	56	43
Exhibit D—Commission Release No. 22	59	45
Exhibit E—Letter to postmasters, December 4, 1935	60	46
Exhibit F—Recital as to	61	47
Exhibit G—Amended bill of complaint in D. C. U. S., Southern New York, No. E 81-378	61	47
Exhibit H—Schedule showing cases filed against members of Commission, etc	101	79
Exhibit I—Letter, Winthrop, Stimson, Putnam & Roberts to Attorney General, November 29, 1935	105	81
Exhibit J—Answer, counterclaim, and cross-bill, etc., in D. C. U. S., Southern New York, No. E 81-378	106	82

99571—36——1

	Original	Print
Record from Supreme Court of the District of Columbia—Con.		
Answer	107	83
First defense	109	84
Separate defense and counterclaim	128	98
Prayer for relief	174	134
Exhibit I—American Power & Light Co. subsidiaries	176	135
Exhibit II—Electric Power & Light Corporation subsidiaries	190	146
Exhibit III—United Gas Corporation subsidiaries	198	153
Exhibit IV—National Power & Light Co. subsidiaries	201	156
Exhibit V—American Gas and Electric Co. subsidiaries	210	164
Exhibit VI—Capitalization	220	173
Order bringing in Attorney General et al. as cross-defendants and allowing intervention of subsidiary company defendants	223	176
Stipulation as to additional parties	224	176
Bill of intervention of Central Arizona Light & Power Company, et al. "subsidiary company defendants"	226	178
Answer to motion for inclusion of affidavit and exhibits thereto in printed transcript of record	233	183
Stipulation re amendment of answer	238	187
Order, including motion, affidavit, and exhibits as part of transcript of record	240	189
Assignments of error	240	189
Designation of record	241	189
Clerk's certificate (omitted in printing)	242	190
Stipulation as to transcript of record	243	191
Petition for allowance of special appeal	245	193
Objections to allowance of special appeal	265	202
Minute entry of hearing	281	214
Opinion, Van Orsdel, J.	282	214
Separate opinion, Groner, J.	285	218
Dissenting opinion, Stephens, J.	287	220
Judgment	294	228
Designation of record	295	228
Clerk's certificate	296	229
Order allowing certiorari	297	230

1 [Captions omitted.]

2 In Supreme Court of the District of Columbia
In Equity. No. 60136

THE NORTH AMERICAN COMPANY, STREET POST OFFICE ADDRESS: NO. 60 BROADWAY, NEW YORK, NEW YORK, PLAINTIFF

vs.

JAMES M. LANDIS, GEORGE C. MATTHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION OF THE UNITED STATES, HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES, AND JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, DEFENDANTS

Bill of complaint (for injunction)

Filed November 26, 1935

To the Honorable the Justices of the Supreme Court of the District of Columbia:

Plaintiff, The North American Company, brings this, its bill in equity, against the defendants above named and respectfully shows:

I

The plaintiff

Plaintiff is a corporation duly organized and existing under the laws of the State of New Jersey, is a resident and citizen of the State of New Jersey, and brings this suit in its own right. Plaintiff's principal office in the State of New Jersey is located at No. 15 Exchange Place, Jersey City; plaintiff is duly qualified to do business in the State of New York and maintains its principal executive offices in said State at No. 60 Broadway in the city of New York.

II

The defendants

Defendants James M. Landis, George C. Matthews, Robert
3 E. Healy, and James D. Ross are members of and constitute the Securities and Exchange Commission (hereinafter referred to as the "Commission"), which is an independent agency in the executive branch of the government of the United States established by an Act of Congress, approved June 6, 1934, known as the "Securities and Exchange Act of 1934"; defendant Homer S. Cummings is the duly qualified and acting Attorney General of the United States; defendant James A. Farley is the duly qualified and acting Post-

master General of the United States. Each of the defendants is a citizen of the United States and each is an inhabitant of and can be found in the District of Columbia.

III

The Grounds Upon Which the Court's Jurisdiction Depends

This is a civil suit in equity within the equity jurisdiction of the Supreme Court of the District of Columbia wherein the matter in controversy exceeds the sum or value of Three Thousand Dollars ($3,000) exclusive of interest and costs. The suit is one arising under the Constitution and laws of the United States in that plaintiff seeks, among other things, to enjoin the defendants herein, and each of them, from performing acts which they threaten to perform in an attempt to enforce against plaintiff the provisions of Title I of an Act of Congress, approved August 26, 1935, entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes" (said Title I of said Act being hereinafter referred to as the "Public Utility Holding Company Act of 1935" or the "Act"), and from instituting or causing to be instituted any action or proceeding against plaintiff, its officers, directors, agents, or employees, on account of any alleged violation of said Act, for the reason that said Act violates the Constitution of the United States, and the Amendments thereto, in the particulars, among others, hereinafter set forth, and in that plaintiff, upon the aforesaid grounds, seeks a judgment holding said Act and each and every provision thereof unconstitutional, null and void; and in that plaintiff seeks a judgment under Section 274 (d) of the Judicial Code, as amended by the Act of June 14, 1934 (Chapter 512,
4 48 Stat. 955, Title 28 U. S. C. A. § 400) declaring said Act, and each and every provision thereof, to be unconstitutional, null, and void.

IV

Plaintiff's corporate character, its outstanding securities and the nature of its business

(a) Plaintiff was incorporated under the laws of the State of New Jersey on June 14, 1890, and, by virtue of the provisions of its certificate of incorporation filed in accordance with the laws of the State of New Jersey, was given and now possesses, authority under said laws, among other things, to acquire, hold and own stocks and other securities.

(b) Prior to August 26, 1935, plaintiff issued, and has now outstanding in the hands of the public, the following securities:

$23,788,000 principal amount of 5% Debentures, due February 1, 1961, with a present market value in excess of $24,000,000.

$30,317,950 par value of 6% Cumulative Preferred Stock, $50 par value, with a present market value in excess of $32,000,000.

8,575,335 shares of Common Stock, without par value, having a present market and asset value each in excess of $230,000,000.

(c) A registration has been for some time, and is now, effective as to each class of securities of plaintiff above listed, in accordance with the provisions of the Securities and Exchange Act of 1934.

(d) Plaintiff has more than 72,000 preferred and common stockholders, over 61,000 of whom held, as of September 10, 1935, each not more than 100 shares of preferred or common stock of plaintiff.

(e) The business of plaintiff consists, and has consisted since shortly after its incorporation in 1890, in acquiring, owning and holding stocks and other securities, primarily for long term investment. In the lawful and proper pursuit of such business plaintiff has invested very large sums of money in stocks and other securities, the aggregate present fair value (based on market quotations where available) of plaintiff's investments being in excess of $300,000,000.

5 (f) The principal investments of plaintiff are in the stocks of "holding companies" as that term is defined in Section 2(a)(7)(A) of the Act, and in the stocks of "public utility companies" as that term is defined in Section 2(a)(5) of the Act. Plaintiff owns, controls or holds with power to vote, more than 10 per centum of the outstanding voting securities of such companies and in consequence such companies are "subsidiary companies" of plaintiff, as that term is defined in Section 2(a) of the Act. Certain of such "subsidiary companies"[1] of plaintiff themselves have "subsidiary companies" which are "holding companies." None of such "public utility companies" or "holding companies" in which plaintiff has an investment carries on business in the State of New Jersey.

(g) The investments of plaintiff consist in the main of its ownership of a majority of the voting securities of North American Edison Company, North American Light and Power Company, both Delaware corporations, Washington Railway and Electric Company, a corporation organized under an Act of Congress, and Western Power Corporation, a New York corporation, each of which corporations is itself a "holding company", and its ownership of more than 10 per centum, but much less than a majority in each instance, of the voting securities of The Detroit Edison Company, a New York corporation, and Pacific Gas and Electric Company, a California corporation. These investments represent substantial equity interests in large public utility operating properties, chiefly electric but partly gas and transportation, centered in Cleveland, Milwaukee, St. Louis, Washington, Detroit, San Francisco, central Illinois, central Iowa and parts of Kansas.

(h) The "public utility companies" engaged in operating the utility properties hereinabove mentioned have outstanding large

[1] Whenever any of the words or phrases defined in Section 2 of the Act are hereinafter used they are intended to have the meaning given to them by said Section, unless the context requires a different meaning.

amounts of lien bonds, debentures and other securities not owned or controlled by plaintiff. None of the "public utility companies" or "holding companies" or other companies in which plaintiff owns any stock, engages in or employs any of its properties in the generation, transmission or distribution of electric energy in interstate commerce.

6 (i) Plaintiff also has a substantial investment in stocks and other securities of corporations which are neither "public utility companies" nor "holding companies". Plaintiff's investments of this character consist in the main of its ownership of all or a controlling majority of the voting securities of (a) 60 Broadway Building Corporation, a New York corporation, the sole asset and business of which is the ownership and operation of the office building in New York City in which plaintiff's principal executive offices are located; (b) West Kentucky Coal Company, a New Jersey corporation, which with its subsidiary companies, all wholly owned, are engaged in the business of mining and selling coal; (c) Wired Radio, Inc., a Delaware corporation, engaged in developing patents in the wired radio field; (d) Associated Music Publishers, Inc., a Delaware corporation, engaged in the business of music publishing; and (e) plaintiff's ownership of the entire preferred stock and approximately 80% of the voting stock of North American Utility Securities Corporation, a Maryland corporation, an investment company whose assets consist of diversified stocks and securities. These companies while neither "public utility companies" nor "holding companies", within the definition of the Act, are nevertheless "subsidiary companies" of plaintiff, as that term is defined in Section 2(a)(8)(A) of the Act, and, in consequence, are themselves subject to many provisions of the Act as hereinafter more particularly set forth.

(j) Plaintiff has employed for many years, and now employs, a number of persons, qualified by training and experience to advise and assist plaintiff in respect of its investments. Their advice and assistance in this respect are essential to the proper conduct of plaintiff's business.

(k) In connection with its business of owning and holding the stocks and other securities of corporations, plaintiff collects dividends upon such stocks and interest upon such other securities, receives interest on advances to its subsidiaries, receives miscellaneous other income, pays interest upon its debentures and distributes dividends to its stockholders. Plaintiff has employed for many years and now employs, a number of persons to perform the clerical and accounting work required for such collection and distribution.

(l) In making its investments, plaintiff has followed a policy of acquiring, in most instances, an investment so sub-
7 stantial that plaintiff is in a position, through the exercise of its voting rights, to satisfy itself that each company in which such investment has been made will always have a board of directors able and willing to provide an efficient management and

one best calculated to develop the corporate enterprise along permanently sound lines, and thus, in so far as is compatible with the public interest, to enhance the value of plaintiff's investment therein. The corporations in which plaintiff has invested are each organized under the laws of one of the States of the United States, except that one of such corporations is organized under an Act of Congress. Each of the corporations in which plaintiff has investments maintains an organization responsible only to its own board of directors, and each functions under the control of its own board of directors in accordance with the laws under which it is incorporated. Nearly all of such companies have outstanding large amounts of securities not owned or controlled by plaintiff. The value of these securities will be seriously affected and their market value greatly impaired and largely destroyed by the enforcement of the Act against plaintiff and its "subsidiary companies."

(m) Plaintiff is not engaged in the business of sending or transporting or causing to be sent or transported, goods, commodities, or services in commerce with foreign nations or among the several States or with the Indian tribes, or in any other kind of interstate commerce, and such use as plaintiff has made, now makes or intends to make of the mails or any other means or instrumentality of interstate commerce is merely incidental to the interstate business of plaintiff hereinabove described, and is for lawful purposes, not in any manner contrary to any regulation of the postal authorities or to any law or purported law of the United States, except insofar as it may be contrary to the terms of the Public Utility Holding Company Act of 1935 or to regulations which may be issued under the purported authority of said Act.

V

Plaintiff is a "Holding Company"

Plaintiff is advised by counsel, and on such advice believes and alleges, that it is a "holding company" as that term is defined
8 in Section 2 (a) (7) (A) of the Public Utility Holding Company Act of 1935. Plaintiff is also advised by counsel, and on such advice believes and alleges, that no application by it under Section 2 (a) (7) of the Act for a declaration that it is not a "holding company" could truthfully negative the facts required by subsection (i) thereof to be negatived as one of the conditions of such declaration, in that plaintiff, by virtue of stock ownership, controls certain "public utility companies" and certain "holding companies" as hereinabove in paragraph IV alleged. Plaintiff is likewise advised by counsel, and on such advice believes and alleges, that it could not in good faith file an application for such declaration and that the Commission could not, under the terms of said Section 2 (a) (7), lawfully declare the plaintiff not to be a "holding company" under subsection (A) of said Section 2 (a) (7), even if

the Commission should find the facts with respect to plaintiff to be as specified in subsection (iii) of said Section 2 (a) (7). Plaintiff is also informed by counsel, and on such advice believes and alleges, that the Commission could not lawfully, under the terms of Section 3 (a) of the Act or of any other section thereof, exempt plaintiff from the provisions of the act even if the Commission found that such exemption would not be detrimental to the public interest or to the interest of investors or consumers.

VI

Plaintiff Is Required by the Act to Register with the Commission

Plaintiff has outstanding securities which, by use of the mails or other means or instrumentality of interstate commerce, were distributed or made the subject of a public offering subsequent to January 1, 1925. Certain of such securities were owned or held on October 1, 1935 by persons not resident in the State of New Jersey, and plaintiff therefore is required, by the terms of Section 4 (b) of the Act, to register on or before December 1, 1935 with the Commission, by filing with said defendant a notification of registration provided for by Section 5 of the Act. Plaintiff is further required by said Section 5 of the Act, within a period after registration to be fixed by the Commission, to file a registration statement with said defendant, which statement must include the items of information specified in Section 5 (b) (1), (2) and (3) of the Act.

9

VII

Effect of Registration: the "Death Sentence"

(a) Registration by a "holding company" with the Commission, as required by Section 4 (b) of the Act, is, according to the provisions of the Act, not merely a means of providing the Commission or the public with information, but amounts to the surrender of the status of an unregistered company and to the acceptance of a license under which the registrant is permitted to do the things forbidden to an unregistered company by Section 4 (a), which things are necessary to the ordinary conduct of the business of this plaintiff. By such registration plaintiff would be permitted to do said things only under the conditions and limitations prescribed by the Act and under the direction and control of the Commission. Such registration is the means provided by the Act whereby plaintiff and its "subsidiary companies" would be brought under the jurisdiction of said Commission and the means by which said Commission would be enabled to carry out the mandate, under Section 11 and other sections of the Act, to dismember and destroy the business of plaintiff, and completely to regulate, control, and reorganize such business pending plaintiff's ultimate dismemberment and destruction.

(b) Under said Section 11 the Commission is directed, as soon as practicable after January 1, 1938, to limit the combined operations of plaintiff and all its "subsidiary companies", of the securities of which the Commission does not require plaintiff to divest itself, to a single "integrated public utility system", as that term is defined in Section 2 (a) (29) of the Act, and "to such other businesses as are reasonably incidental or economically necessary or appropriate to the operations of such integrated public utility system." Said Section 11 embraces plaintiff's "subsidiary companies" within its scope and is limited only by:

(1) a proviso that a registered holding company may "continue to control one or more additional integrated public utility systems" if the Commission finds:

(a) each of such additional systems cannot be operated independently without the loss of substantial economies obtainable by retention of control by such holding company of such systems;

(b) all of such additional systems are located in one state or in adjoining states or in a contiguous foreign country; and

(c) the continued combination of such systems under the control of such holding company is not so large as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation;

(2) a proviso that the Commission "may permit as reasonably incidental or economically necessary or appropriate to the operations of one or more integrated public utility systems, the retention of an interest in any business (other than the business of a public utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

(c) Under the provisions of the Act referred to above in this paragraph, the Commission is empowered and directed to destroy one of the most important and vital elements in plaintiff's business, to-wit, the element of diversification. It has been plaintiff's settled policy to select its investments in the public utility field so that the operating properties of the companies it controls shall be in different states and groups of states and regions. The purpose underlying this policy is to avoid the hazards of local and regional vicissitudes and depressions due to industrial, economic and other changes which might unduly depress the value and impair or destroy the earning power of the public utility properties in any individual locality or region. This diversification is necessary to the proper and successful conduct of plaintiff's business, because plaintiff is thereby enabled at all times to maintain sufficient earnings and financial resources so that it can withstand depressions, and so that it can provide local subsidiaries or groups of subsidiaries, whose earnings may be temporarily impaired, with necessary funds which they could not procure except from plaintiff. This diversi-

fication enables plaintiff to command a wide and sure market for its own securities in amounts large enough to provide the necessary junior capital funds for such improvement and expansion of the properties of its subsidiaries as the needs and demands of the public may require. The destruction by the Act of the element of
11 diversification in plaintiff's business, even though postponed until after January 1, 1938, constitutes an immediate and substantial injury to plaintiff and its stockholders.

(d) Under Section 11 (b) (2) of the Act, registration by plaintiff makes it the duty of the Commission, upon a finding by it that plaintiff's corporate structure or continued existence of the corporate structure or continued existence of any other company in its "holding company system", "unduly or unnecessarily complicates the corporate structure" of such system, or unfairly or inequitably distributes voting power" among security holders of such system, to require the plaintiff and/or any of its subsidiary companies "as soon as possible after January 1, 1938", to take such steps as the Commission shall find necessary to ensure against said results. Said provision of Section 11(b) (2) is subject only to an exception (not applying to the plaintiff, but only to certain of its "subsidiary companies") to the effect that the Commission shall not require any change in the corporate structure or existence of any company which is not a "holding company", or whose principal business is that of a "public utility company", except for the purpose of fairly and equitably distributing voting power among the security holders of such company.

(e) Under the aforesaid Sections of the Act, therefore, registration by plaintiff enables the Commission to exercise against plaintiff the mandate of the Act under which plaintiff, after January 1, 1938, is required to dispose of most of its investments, direct or indirect, in the stocks and securities of "public utility companies" and "holding companies." The Commission is likewise given power, in its uncontrolled discretion, under said section as aforesaid to require plaintiff to dispose of its investments, direct or indirect, in companies not engaged in business either as "public utility companies" or "holding companies." Said Section 11 of the Act, therefore, pronounces a "death sentence" upon plaintiff under which the Commission is empowered and directed to paralyze and dismember plaintiff's business and to force its complete disintegration.

(f) At the same time that plaintiff would be required, as hereinabove set out, to dispose of most of its investments, many other "holding companies" throughout the United States would be required to market similar investments. Under such circumstances,
12 constituting practically simultaneous forced sales of similar securities amounting to billions of dollars in total value, it would not be possible, upon such sale and disposition, to realize anywhere near the fair long range values of plaintiff's investment and in consequence an enormous and unnecessary loss would be arbitrarily visited upon plaintiff and its stockholders.

(g) Said Section 11 of the Act, constituting in substance a "death sentence" pronounced upon plaintiff, requires the immediate abandonment of policies developed by plaintiff over a long period of years in the lawful conduct of its business. The assets of plaintiff are to a preponderant extent invested, directly or indirectly, in a relatively small number of utility enterprises in each of which the investment is very large. Such investments were designed to be of a permanent character and as such require the application of policies calculated to maintain and increase underlying values over a period of years. It is vitally important for the utility enterprises in which plaintiff has invested to be in a position at all times to obtain new capital for expansion to meet increasing demands for service and at low cost to the public. Therefore, it has been the policy of plaintiff to build up the value of the equities of utility enterprises in which it has investments so that proper and prudent balance is maintained between common stock equities and securities representing fixed obligations, in order that new capital may be obtained by such companies without the creation of a funded or current indebtedness so great as to imperil such companies during periods of impaired earnings or depression. In furtherance of this policy, plaintiff has invested large additional sums in "public utility companies" and public utility "holding companies" which were already its subsidiary companies", as that term is defined in Section 2 (a) (8) (A) of the Act, and also such companies, and their subsidiary "public utility companies" have, with plaintiff's approval, and under the control of directors elected by vote of stock owned or controlled by plaintiff, retained large amounts of earnings for investment in their properties and businesses instead of distributing such earnings by way of dividends. During the last ten years alone, such investments by plaintiff and such "plowed back" earnings exceeded $130,000,000, excluding earnings so "plowed back" by "subsidiary companies" in which plaintiff and its subsidiary "holding companies" held
13 less than a majority interest in the voting securities. In order to support and render more valuable plaintiff's utility investments, plaintiff has invested in and extended financial aid to companies which seek to develop for the future new fields involving the use of electric power. Said Section 11 of the Act prevents the continuance of said policies of plaintiff and prevents any attempt by plaintiff to enhance the long range value of its investments, all to the great and irreparable loss and damage of plaintiff and its stockholders.

(h) said Section 11 of the Act, constituting in effect a "death sentence" pronounced upon plaintiff, threatens the imminent disruption of plaintiff's management and personnel. In order to conserve its investments and to increase their value, plaintiff has, over a long period of years, created and built up a management composed of persons of broad experience and sound judgment with respect to investments of the character made by plaintiff. Such management is skilled in solving financial and other problems of utilities and

enjoys to a unique degree the acquaintanceship and confidence of the business and financial community. Plaintiff has also built up an organization for the purpose of assisting its management in the selection, handling, and disposition of plaintiff's assets and affairs. The persons comprising plaintiff's management and organization have been in plaintiff's employ for many years and are virtually irreplaceable. It cannot be expected that such persons will continue to remain in plaintiff's employ on account of the proximate elimination of plaintiff and of its enterprise which is contemplated by the "death sentence" pronounced upon plaintiff by the Act. Plaintiff cannot, in the face of the drastic provisions of the Act, continue to maintain its valuable management and organization and such management and organization, if dissipated, cannot be created and built up for a long period of time, if at all, and its loss by reason of the premises will visit a very large and irreparable damage upon plaintiff and its stockholders.

(i) Said Section 11 of the Act, constituting a "death sentence" pronounced upon plaintiff, prevents a consolidation, now and for some time past desired by plaintiff, of North American Edison Company and Western Power Corporation with plaintiff. Said North American Edison Company, a Delaware corporation organ-
14 ized in 1922, and Western Power Corporation, a New York corporation organized in 1915, are "holding companies" intervening between plaintiff and public utility operating companies in the "holding company system" of which plaintiff is a part and each has large amounts of securities outstanding not owned or controlled by plaintiff. For several years plaintiff has desired to consolidate said "holding companies" with plaintiff, but the laws of Delaware and New York would not permit. In April 1935 the laws of Delaware and New York were amended and such consolidation may now lawfully be effected in accordance with such laws as so amended. Plaintiff would have proceeded, immediately upon the amendment of the laws of Delaware and New York as above described, to effect a consolidation with North American Edison Company and Western Power Corporation, but the pendency of the Act in Congress and the adverse effects of the Act upon the securityholders of such companies and of plaintiff made it impossible to do so. By reason of the existence of the Act and the enforced dismemberment and elimination of plaintiff contemplated thereby, it has been impossible, since the enactment of the Act, and is now impossible, to effect the desired consolidation, whereas, in the opinion of plaintiff, it would have been, and now and in the future would be, entirely possible and feasible for plaintiff to effect such consolidation if it were not for said Act.

The Revenue Act of 1935, approved by the President on August 30, 1935, imposes a tax amounting to 1½% on all dividends received by a corporation in 1936 and subsequent years from another corporation subject to taxation on its income. Dividends received by plaintiff from North American Edison Company and Western Power Corporation for the year 1934 amounted in the aggregate to $5,179,936.60;

for the year 1935 plaintiff estimates that such dividends will amount in the aggregate to approximately $6,600,000; and for the year 1936 plaintiff estimates that such dividends will amount in the aggregate to not less than $6,750,000. The estimated amount of intercorporate dividend tax payable by plaintiff in respect of 1936 dividends from North American Edison Company and Western Power Corporation is, therefore, approximately $101,250. The payment of such amount in respect of any year would not be required if plaintiff, prior
15 to the beginning of such year, could effect the consolidation hereinabove described. In this respect, therefore, among others, the inability of plaintiff, by reason of the existence of said Act, to effect such a consolidation constitutes an immediate and substantial and irreparable injury to plaintiff and its stockholders.

VIII

Other Effects of Registration: Complete Regulation and Control of Plaintiff Preparatory to Execution of the "Death Sentence"

(a) Registration by plaintiff with the Commission as required by Section 4 (b) of the Act would not only enable the Commission, after January 1, 1938, to enforce the decree for the destruction of plaintiff's business, but such registration would also enable said Commission, pending such destruction, completely to regulate and control the business of plaintiff.

(b) Registration by plaintiff with the Commission would immediately make impossible the proper conduct of plaintiff's business by reason of the following, among other, regulatory powers vested in the Commission:

1

Issue and Sale of Securities

(1) Under the provisions of Sections 6 and 7 of the Act it would be unlawful for plaintiff or its "subsidiary companies" (except in cases permitted under the exercise of the power given to the Commission to exempt subsidiary companies of the plaintiff with respect to the issue or sale of certain of their securities issued for limited purposes and under certain defined circumstances), to issue or sell any of their own securities, or to exercise any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of any of their own outstanding securities, without the consent of the Commission.

(2) Under these sections, plaintiff's directors would no longer be permitted to exercise their discretion as to the type of securities which should be issued by plaintiff in order to meet conditions in the money markets at the time the issue of such securities becomes
16 necessary. These sections of the Act do not permit the Commission to grant its consent to the issue or sale of securities by plaintiff unless the security to be issued or sold is

"a common stock having a par value and being without preference as to dividends or distribution over, and having at least equal voting rights with, any outstanding security of the declarant;"

or

"a bond (i) secured by a first lien on physical property of the declarant, or (ii) secured by an obligation of a subsidiary company of the declarant secured by a first lien on physical property of such subsidiary company, or (iii) secured by any other assets of the type and character which the Commission by rules and regulations or order may prescribe as appropriate in the public interest or for the protection of investors;"

(3) I norder that plaintiff may continue to fulfill its function of building up the equities of the utility enterprises in which it has investments, it is necessary for plaintiff to be prepared to raise additional capital funds through the issue and sale of plaintiff's own securities. It is impracticable for plaintiff to issue either of the two types of securities above specified. Although plaintiff's assets are worth over $300,000,000 it owns no substantial amount of the limited kind of assets above specified as necessary for the securing of bonds. Moreover, plaintiff's charter, lawfully granted under the laws of New Jersey, authorizes plaintiff to issue additional preferred stock and common stock without par value, and does not authorize plaintiff to issue common stock having a par value. Plaintiff's ability to raise needed capital funds on advantageous terms depends on the judgment of the money market from time to time as to the value of investments in the plaintiff's securities and also depends upon plaintiff's ability to offer on the market the particular kind of security then most desired by the investing public. The imposition upon the plaintiff of arbitrary and unreasonable restrictions upon the kinds of securities which it may issue, for the foregoing, among other reasons, constitutes an immediate and substantial injury to plaintiff and its stockholders.

17 (4) The only exceptions to this limitation on the types of securities which plaintiff would be permitted to issue under the Act, are when the security to be issued or sold is solely for the purpose of "refunding, extending, exchanging, or discharging" an outstanding security of plaintiff "or for the purpose of effecting a merger, consolidation, or other reorganization;" or "for necessary and urgent corporate purposes" of plaintiff where the limitations "would impose an unreasonable financial burden" upon plaintiff "and are not necessary or appropriate in the public interest or for the protection of investors or consumers;". Such vague and indefinite standards would render highly speculative the circumstances under which plaintiff might be permitted to issue securities other than par value common stock or bonds, except in the case of meeting maturing issues or to effect a merger, consolidation or other reorganization, and such uncertainty would render it impracticable for plaintiff to do timely and advantageous financing and refunding.

(5) The Commission moreover could not grant its consent to plaintiff to issue such securities if it found, among other things, that "(1) the security is not reasonably adapted to the security structure of the declarent and other companies in the same holding company system: (2) the security is not reasonably adapted to the earning power of the declarant: (3) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of the business in which the applicant lawfully is engaged or has an interest, or (4) the fees, commissions, or other remunerations, to whomsoever paid, directly or indirectly, in connection with the issue, sale or distribution of the security are not reasonable." The Act provides no standards or tests by which the Commission or plaintiff might determine whether the security to be issued is or is not "reasonably adapted" to plaintiff's earning power or to plaintiff's security structure or the security structure of other companies in plaintiff's "holding company system." No tests or standards are provided by the Act for the determination of whether commissions or fees to be paid in connection with the issuance and sale of the securities are "reasonable" or whether the financing
18 is "necessary or appropriate" to the "economical and efficient operation" of plaintiff's business as required by the Act. In the conduct of plaintiff's business, financing must be foreseen and planned for considerably in advance of the actual issuance of the securities. The uncertainty because of the above provisions as to whether a particular issue of securities would be approved under the Act and the absence of any tests or standards to control the discretion of the Commission in deciding to approve or to disapprove the issue, and by which the plaintiff in making its plans for financing could be guided, would seriously interfere with and hamper plaintiff's Board of Directors and officers in the proper conduct of plaintiff's business, and, because of the necessity of prompt action in order to take advantage of favorable market conditions, would often prevent advantageous and necessary financing.

2

Acquisitions of Property

(1) Under the provisions of Sections 9 and 10 of the Act it would be unlawful for plaintiff, or for any of its "subsidiary companies" (with certain relatively unimportant exceptions) to acquire "any securities or utility assets or any other interest in any business" without the consent of the Commission. Said Commission is expressly prohibited under Section 10 (c) (2) from approving the acquisition by plaintiff of any securities or utility assets of a public utility company or a holding company unless such acquisition would tend toward "the economical and efficient development of an integrated public utility system." If a proposed acquisition would not have this effect, the Commission is powerless to approve, although it might

be in the public interest for it to do so. The plaintiff's freedom of contract is thus greatly impaired by the express terms of the Act itself and plaintiff is thereby deprived of one of the fundamental economic reasons for its existence, namely, the making of sound investments on a basis of geographical diversity.

(2) Even though a proposed acquisition would tend towards the efficient and economical development of an integrated public utility system, the Commission under Section 10 (b) of the Act cannot approve the acquisition if it finds that (1) the acquisition "will tend towards interlocking relations or the concentration of control of public utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers;" or (2) the consideration to be paid for the securities or utility assets to be acquired is not reasonable "or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired;" or (3) the acquisition will "unduly complicate the capital structure of the holding company system * * * or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning" of the holding company system. In these provisions also there are no standards or tests provided to guide plaintiff or the Commission in determining whether a proposed acquisition complies with these vague and indefinite conditions. Acquisitions of property and securities require the preparation of plans and the working out of details long in advance of the actual acquisition. Plaintiff's freedom of contract would thereby be impaired, and the difficulties and uncertainties inevitably resulting from these provisions would seriously embarrass, impair, and disrupt the plaintiff's proper and lawful conduct of its business.

3

Investigatory Powers of the Commission

Under Section 11 (a) of the Act plaintiff would immediately upon registration be subject to a sweeping investigation by the Commission, which investigation would cause great expense and damage to plaintiff and all its "subsidiary companies", such expense and damage being occasioned by the necessity of preparing voluminous reports and answers to numerous questionnaires which would be required by the Commission, and by the necessity of retaining, in the various parts of the country in which the offices and properties of such companies are located, numerous attorneys, accountants, and consulting engineers to assist plaintiff and such companies in presenting their cases to the Commission and in safeguarding their legal and constitutional rights and the rights of the various classes of security-holders. Such investigation would also result in additional substantial loss and damage to plaintiff and all such other companies through interference with the performance of the

regular duties of their executive officers and accounting and clerical staffs.

4

Loans, Dividends, Proxies, and Other Corporate Matters

(a) Under the provisions of Section 12 of the Act it will be unlawful for plaintiff, and also (except as to the matters hereinafter in subdivision (3) of this paragraph alleged) for any of its subsidiary companies, to do, among other things, any of the following things, in contravention of rules, regulations, or orders which the Commission may prescribe with respect thereto:

(1) To lend or in any manner extend its credit to or to indemnify any other company in the plaintiff's holding company system. The rules, regulations, or orders which the Commission is to promulgate with respect to said acts are to be such as the Commission deems necessary or appropriate, among other things, in the public interest or for the protection of investors or consumers.

(2) To declare or pay any dividend on any of its securities or to acquire, retire, or redeem any of its securities. The rules, regulations, or orders which the Commission is to promulgate with respect to said acts are to be such as the Commission deems necessary or appropriate, among other things, to protect the financial integrity of companies in plaintiff's holding company system.

(3) To sell any security which it owns of any "public utility company." The rules, regulations, or orders which the Commission is to promulgate with regard to said acts are to be rules regarding the consideration to be received for such sales, the maintenance of competitive conditions, fees and commissions, accounts, disclosures of interest, and similar matters; and they are to be such as the Commission deems necessary or appropriate, among other things, for the protection of investors or consumers.

(4) To solicit or to permit the use of its name to solicit any proxy, power of attorney, consent, or authorization regarding any of its securities. The rules, regulations, or orders which the Commission is to promulgate with respect to said acts are to be such as the Commission deems necessary or appropriate, among other things, in the public interest or for the protection of investors or consumers.

21 (5) To negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under the Act, with any company or with any affiliate of any company in the plaintiff's holding company system. The rules, regulations, or orders which the Commission is to promulgate with regard to said acts are to be rules regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters; and they are to be such as the Commission deems necessary or appropriate, among other things, in the public interest or for the protection of investors or consumers.

(b) In the above provisions of Section 12 there are no standards or tests provided to guide plaintiff or the Commission in determining whether any of the rules, regulations, or orders issued by the Commission comply with the vague and indefinite conditions laid down in the Act. The threat of imposition upon plaintiff and upon its "subsidiary companies" of these rules, regulations, and orders, which will seriously interfere with the proper management of the business of plaintiff by its Board of Directors and with the proper management of the business of the several "subsidiary companies" of plaintiff by their respective boards of directors constitutes an immediate and substantial injury to plaintiff and its stockholders.

5

Accounting, Reports, and Other Matters

Under numerous provisions of the Act, plaintiff, if it registers, and, in most cases, each of its subsidiary companies also, would be required to file with the Commission reports and other papers of the most comprehensive and detailed character with respect to practically every phase and aspect of their business, including those which have not even the remotest connection with or any possible effect on interstate commerce. Under Section 15 (e) of the Act it is also expressly made unlawful for any of them to keep their "accounts, cost accounting procedures, correspondence, memoranda, papers, books, and other records" otherwise than in the form and manner prescribed by the Commission after said defendant has pre-
22 scribed such form and manner. In addition they will be subject to visitatorial powers of the Commission of the most drastic, comprehensive, and detailed nature, and with respect to matters which have no connection with nor any possible effect on interstate commerce. Among other things plaintiff and its subsidiary "holding companies" would be required to file within a "reasonable time" to be fixed by the Commission, "registration statements", the matters which must be included therein being specified in Section 5 (b) of the Act. The cost to plaintiff and its subsidiary "holding companies" of compiling the data necessary to be included in said "registration statements" under the terms of Section 5 (b) would probably be substantially in excess of $50,000.

(c) Registration by plaintiff with the Commission, by reason of the foregoing extensive regulatory powers vested in said defendant, would subject plaintiff, as hereinabove alleged, to the control and direction of the Commission as to virtually every aspect of its business and corporate life, and would substantially oust plaintiff's officers and directors from such direction and control.

(d) Section 12 of the General Corporation Act of the State of New Jersey provides in material part as follows:

"The business of every corporation shall be managed by its directors * * *."

The common law of the State of New Jersey likewise imposes upon directors of a corporation incorporated in the State of New Jersey the duty of managing the business of such corporation. The transfer and delegation of the management of plaintiff's business and corporate enterprise from its Board of Directors to the Commission, by reason of the regulatory powers conferred upon said Commission by the Act as hereinabove enumerated, would be contrary to and in violation of both the statute law and the common law of the State of New Jersey.

IX

Impairment of Plaintiff's Investments in "Holding Companies"

Registration by plaintiff with the Commission, as hereinbefore in paragraphs VII and VIII alleged, would bring
23 plaintiff under the jurisdiction of the Commission, would enable said Commission to carry out the "death sentence" imposed upon plaintiff by the Act and thus to dismember and destroy its business, would give rise to complete control of plaintiff under the Act pending its dismemberment and destruction, and would thereby subject plaintiff and its stockholders to great, immediate and irreparable damage, loss, and injury all as more particularly hereinbefore alleged. Such damage, loss, and injury would likewise be caused to the "holding companies" and "[illegible] companies" whose stocks and securities plaintiff owns, by reason of the applicability of all or certain parts of the Act to such companies. In consequence the Act directly and immediately threatens to and does impair and diminish the value of plaintiff's investment in such companies and thus arbitrarily inflicts upon plaintiff and its stockholders further great, immediate, and irreparable damage, loss, and injury.

X

The Unconstitutionality of the Act

Plaintiff is advised by counsel, and, on such advice, believes and alleges, that the Public Utility Holding Company Act of 1935 is invalid, void, and of no effect in that said Act violates and contravenes the provisions of the Constitution of the United States and the Amendments thereto, in the following respects, among others:

1. Said Act is not a valid exercise of the power of Congress to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes and seeks to impose arbitrary and unconstitutional restrictions upon such commerce; is not a valid exercise of the power of Congress to establish Post Offices and post Roads and seeks to impose arbitrary and unconstitutional restrictions upon the use of the mails; is not a valid exercise of any power conferred by the Constitution upon Congress; and is, therefore, in violation of Article I, Section 8 of the Constitution.

2. Said Act attempts unlawfully to delegate legislative power to the Commission in violation of Article I of the Constitution.

3. Said Act attempts to deprive plaintiff, its debentureholders and its stockholders of their property without due process of law in violation of the Fifth Amendment to the Constitution.

4. Said Act attempts to take the private property of plaintiff, its debentureholders and its stockholders for public use without just compensation in violation of the Fifth Amendment to the Constitution.

5. Said Act attempts to impose excessive fines and cruel and unusual punishments upon plaintiff, in violation of the Eighth Amendment to the Constitution.

6. Said Act attempts unlawfully to impose a Federal system of regulation and destruction upon plaintiff and thereby attempts to invade and usurp powers reserved to the States, all in violation of the Tenth Amendment to the Constitution.

7. Said Act attempts to subject plaintiff to unreasonable searches and seizures in violation of the Fourth Amendment to the Constitution.

8. Said Act seeks to deprive plaintiff of its right to a judicial determination of all questions of fact affecting its constitutional rights, and thereby deprives plaintiff of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

Plaintiff is further advised by counsel and, on such advice, believes and alleges that said Public Utility Holding Company Act of 1935 is inseparable in its provisions and that in consequence said Act is in its entirety unconstitutional, invalid, null and void.

XI

Plaintiff's Reasons for Not Registering

(a) Being advised by counsel that said Public Utility Holding Company Act of 1935 is, in its entirety, unconstitutional, invalid, void, and of no effect, plaintiff cannot, in the protection of its rights and those of its debentureholders and stockholders, submit itself in any way to the jurisdiction of the Commission or register with said Commission as required by Section 4 (b) of the Act.

(b) Plaintiff is advised by counsel, and, on said advice, believes and alleges that registration by it with the Commission, as required by Section 4 (b) of the Act, might seriously prejudice and jeopardize the right of plaintiff to the prompt and timely equitable relief necessary to prevent great, immediate, and irreparable damage and injury to plaintiff, its debentureholders and its stockholders by reason of the harsh and drastic provisions of the Act, all as in this bill of complaint alleged, and that such registration by plaintiff, even if qualified pursuant to an understanding or

arrangement with the Commission, might seriously prejudice and jeopardize plaintiff's right to adequate protection against the immediate injury threatened to plaintiff, its debentureholders and its stockholders by reason of said harsh and drastic provisions of the Act. Being so advised in the premises, plaintiff is obliged, in the protection of its constitutional rights and the constitutional rights of its numerous and scattered debentureholders and stockholders, not to submit voluntarily to the jurisdiction of the Commission or voluntarily to register with said Commission and, in consequence, plaintiff does not intend voluntarily to register with the Commission or voluntarily to submit itself or its properties and business to the control of said Commission, and plaintiff asserts in this proceeding the unconstitutionality and invalidity of the Act as applied to it and seeks the protection of this Honorable Court sitting in equity.

XII

Consequences to Plaintiff of Failure to Register

(a) Failure of plaintiff to register with the Commission by December 1, 1935, as required by Section 4 (b) of the Act, gives rise to the severe and excessive penalties provided by Section 29 of the Act as follows:

"Sec. 29. Any person who willfully violates any provision of this title * * * shall upon conviction be fined not more than $10,000 or imprisoned not more than two years, or both, except that in the case of a violation of a provision of subsection (a) or (b) of section 4 by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding $200,000: * * *"

(b) In addition, Section 4 (a) of the Act purports to make it unlawful, after December 1, 1935, while plaintiff still remains unregistered as aforesaid, for plaintiff

"(1) to sell, transport, transmit, or distribute, or own or
26 operate any utility assets for the transportation, transmission, or distribution of natural or manufactured gas or electric energy in interstate commerce;

"(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

"(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any

means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

"(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

"(5) to engage in any business in interstate commerce; or

"(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5)."

(c) If plaintiff, while still unregistered as aforesaid, does any of the acts enumerated in (1) to (6) above, the Act purports to inflict severe and excessive penalties, as set forth above, for each such act. As heretofore in paragraph IV alleged, plaintiff, in the exercise of its lawful corporate powers, controls securities of certain "subsidiary companies" which, as incidental to their business, own and operate utility assets for the transmission of electric energy in interstate commerce, and which do or may do other acts described in Section 4 (a) of the Act. Section 4 (a) (6) of the Act purports to make it unlawful for plaintiff, while unregistered after December 1, 1935, to own, control, or hold with power to vote securities of such "subsidiary companies" and in consequence the Act purports to subject plaintiff after December 1, 1935 to the severe and excessive fines and penalties hereinabove enumerated.

27 (d) Section 26 (b) of the Act provides in part that "every contract * * * the performance of which involves * * * a continuance of any ownership or practice in violation of any provision of this Title * * * shall be void" as to the rights of any persons who, in violation of the Act, engaged in the performance of any such contract and as to the rights of any person who, although not a party to the contract, had acquired such rights with actual knowledge of the contract being in violation of the Act. In consequence, failure of plaintiff to register with the Commission by December 1, 1935 will not only subject plaintiff to the severe and excessive fines and penalties provided by section 29 of the Act, but also the provisions of said Section 26 (b) will cast a substantial and immediate cloud upon the lawful exercise by plaintiff of the powers resulting from its ownership and control of securities of its "subsidiary companies."

(e) Failure of plaintiff to register with the Commission as required by Section 4 (b) of the Act, by December 1, 1935, makes it unlawful for plaintiff after December 1, 1935 to do any of the acts specified in Section 4 (a) of the Act and hereinabove enumerated. Such failure of plaintiff to register, as well as the doing while unregistered of any of said acts, will subject plaintiff, under the Act, to such severe, excessive, and unreasonable penalties as to destroy and confiscate its property and the property of its debentureholders and stockholders.

(f) It is essential to the business of plaintiff and the proper management of its assets and affairs for plaintiff to be free to engage in some or all of such activities which the Act would prohibit to plaintiff upon its failure to register. Moreover, plaintiff has no power to dictate to any of its "subsidiary companies" as to how the business of such company shall be conducted, so long as the directors of such company are properly managing its affairs. Should plaintiff so dictate, in a manner contrary to the interests of such company, plaintiff would be guilty of a violation of law and if the directors of any such "subsidiary company" permitted plaintiff to dictate in a manner contrary to the interests of such "subsidiary company" such directors would be guilty of a violation of the law of the state of incorporation of such "subsidiary
28 company." Moreover plaintiff has no control of its "subsidiary companies" in which it holds less than a majority interest in the voting securities. Section 4 (a) (6) of the Act, therefore, which purports to make it unlawful for plaintiff to "own, control, or hold with power to vote" any security of a subsidiary company that does any of the acts enumerated in paragraphs (1) to (5) inclusive of said Section, either calls for plaintiff to assume unlawful and dictatorial power over its subsidiaries as to the methods or kinds of business which they shall conduct, or else makes unlawful an otherwise lawful act of plaintiff, because of acts of others over which acts plaintiff has no control and the doing of which acts plaintiff is powerless to prevent.

(g) It is impossible for plaintiff to comply with the provisions of said Section 4 (a) of the Act, in that, among other things, said Section of the Act forbids plaintiff the ownership of a very substantial part of its assets while at the same time it deprives plaintiff of the only practicable way of divesting itself of such assets. If plaintiff be validly prohibited from engaging in the activities specified in said Section 4 (a) of the Act and hereinabove enumerated, plaintiff will have no practical alternative to dissolving and winding up its affairs, and at the same time the Act purports to deprive it of the only practicable means of effecting such dissolution and winding up, namely by the distribution or public offering for sale of all or a large part of the securities owned by it, in order that it may pay off its own senior security holders, all to the great, immediate and irreparable damage and injury of plaintiff, its debenture-holders and stockholders.

XIII

Theatened Acts of Defendants

(a) Defendants James M. Landis, George C. Matthews, Robert E. Healy and James D. Ross, as members of the Securities and Exchange Commission, are required by the terms of the Act, and they are asserting their authority and are threatening under color of said Act, to exercise all the duties and powers necessary to

enforce and administer the Act, to issue rules, regulations and orders thereunder and to take such steps and institute such proceedings as to them may seem desirable for the administration and enforcement of the Act and for the enforcement of penalties for violation of the Act; defendant Homer S. Cummings, as the duly qualified and acting Attorney General of the United States, is invested with the duty of taking such steps and instituting such proceedings as may be necessary to enforce the laws of the United States and, in addition, by the express terms of Section 18 (f) of the Act, said defendant, as Attorney General, is invested with discretion to institute appropriate criminal proceedings under the Act; defendant, James A. Farley, as the duly qualified and acting Postmaster General, is invested with the duty of superintending generally the business of the Post Office Department, including the use of the mails, and of superintending generally the enforcement of all laws relating to the postal service.

(b) Plaintiff is informed and believes, and on such information and belief alleges, that the defendants herein named are threatening to and will cause civil proceedings to be instituted against plaintiff, by reason of plaintiff's failure to register under the Act, or if, while unregistered, plaintiff does any of the acts specified in Section 4 (a) of the Act and hereinabove enumerated; and that the defendants may, by reason of plaintiff's failure so to register, seek to deprive plaintiff of the use of the mails and of other means and instrumentalities of interstate commerce for purposes wholly lawful and proper apart from the prohibitions of the Act; and that by reason of plaintiff's failure to register as aforesaid, the defendants may, in their discretion, also cause to be instituted and prosecuted repeated criminal actions against plaintiff, its officers, directors, agents, and employees whereby a multiplicity of suits and proceedings will ensue, the business of plaintiff will be interfered with, damaged, and crippled, and plaintiff, its debentureholders, and its stockholders will suffer great, immediate, and irreparable damage and injury.

XIV

The Act is a Present Cloud on Plaintiff's Title to Its Investments

(a) By reason of the matters and things hereinabove alleged the Public Utility Holding Company Act of 1935 constitutes a present and substantial cloud and encumbrance upon plaintiff's title to its investments lawfully acquired, owned and held, and a present and substantial impairment of plaintiff's right to freedom of contract and to the enjoyment of plaintiff's property, and said Act presently and immediately injures and destroys plaintiff's credit and the value of plaintiff's properties and securities, and plaintiff is thereby subjected to great, immediate, and irreparable injury and loss.

(b) An actual controversy has arisen between the plaintiff and defendants, in which the defendants assert and propose and threaten to exercise their purported authority to regulate, control, manage, prohibit, dismember, and destroy the business, affairs, properties, and rights of plaintiff, under the provisions of said Act, and in which plaintiff denies that defendants have any such lawful authority and refuses to submit thereto.

XV

Necessity for Equitable Relief

Unless relief be found in equity and by the injunctive process of this Court, plaintiff's failure to register with the defendant Commission, as required by Section 4 (b) of the Act, will result in a multiplicity of suits against plaintiff and its "subsidiary companies" and a multiplicity of prosecutions of their officers and agents, in many different jurisdictions, by reason of which, plaintiff, its "subsidiary companies" and their said officers and agents, and each of them, will suffer great, immediate, and irreparable damage and injury; plaintiff, its "subsidiary companies" and their said officers and agents may be subjected to excessive and unusual fines, penalties, and forfeitures; the vested rights of plaintiff and its "subsidiary companies" in property now lawfully owned, controlled, and operated by them will be impaired, their freedom of contract destroyed or greatly interfered with, a cloud will be cast upon the title to use, enjoy, and exercise their rights of lawful ownership in their valuable properties as conferred by the respective States of their incorporation, and said properties will be appropriated without due process of law and taken for public use without just compensation, and they and each of them will be denied the equal protection of the laws and compelled to suffer great, immediate, and irreparable damage and injury under a void and unconstitutional statute. Plaintiff, having no plain, adequate, and complete remedy at law in the premises, can only obtain adequate and
31 effective relief in a suit of this nature administered in a Court of Equity.

Wherefore, reserving the right hereafter to apply for temporary injunctive relief, plaintiff prays:

(1) That defendants and each of them and their successors in office and all those acting or claiming to act under their authority or by their direction be permanently restrained and enjoined from attempting by any means whatsoever to compel compliance by plaintiff with said Act or to enforce the provisions of said Act against plaintiff, from issuing against plaintiff or making applicable to plaintiff any order, rule, or regulation under said Act, from instituting or causing to be instituted against plaintiff or its directors, officers, agents, or employees any prosecution, action, or other proceedings for any alleged violation of said Act or of any order, rule,

or regulation under it, and from requiring or attempting to require plaintiff or any of its "subsidiary companies" to comply with any provision of said Act or of any order, rule, or regulation under it; and that said Act and each and every provision thereof be adjudged unconstitutional, void, and of no effect.

(2) That a judgment be entered under Section 274 (d) of the Judicial Code, as amended by the Act of June 14, 1934 (Chapter 512, 48 Stat. 955, 28 U. S. C. A. § 400), declaring that the Public Utility Holding Company Act of 1935, being Title I of an Act of Congress, approved August 26, 1935, entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes" violates the Constitution of the United States, and that said Act and each and every part thereof is invalid, null, and void.

(3) That plaintiff may have such other and further relief as may to the Court seem just and equitable.

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Of Counsel.

32 [*Duly sworn by James F. Fogarty, jurat omitted in printing.*]

The Clerk will please file and issue the writ of subpoena to all of the defendants.

JOHN S. FLANNERY,
Attorney for Plaintiff.

In Supreme Court of District of Columbia

Motion to stay proceedings

Filed December 7, 1935

In Equity. No. 60,136

* * * * * * *

The defendants in the above-entitled causes respectfully represent to this Honorable Court as follows:

1. The bills of complaint herein seek to enjoin the enforcement of the Public Utility Holding Company Act of 1935 (Public No. 333, 74th Congress, Title I), upon the ground that the said Act is unconstitutional.

2. There have been filed in at least ten district courts of the United States at least forty-eight bills of complaint on behalf of 147
33 plaintiffs, all of which similarly seek to enjoin the enforcement of the said Act, on the ground that it is unconstitutional.

3. The Government is anxious to secure an early determination of the constitutionality of said Act. To that end the Securities and Exchange Commission, pursuant to its duty under the Act, has already instituted a civil suit in the Southern District of New York against Electric Bond and Share Company and five of its principal subsidiary holding companies. This suit of the Securities and Exchange Commission against Electric Bond and Share Company, et al., will be prosecuted with all due diligence to secure from the Supreme Court promptly an authoritative determination of the validity of the essential features of the Act. No public interest will be served by pressing for a decision of this issue in a multitude of suits. On the contrary, such a course of action will tend to clog the courts, overtax the facilities of the Government, and make against that orderly and economical disposition of the controversy that is the Government's aim.

Wherefore, the defendants respectfully move this Honorable Court to stay all the proceedings herein relating to the validity of the Public Utility Holding Company Act of 1935 until the validity of said Act has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission v. Electric Bond and Share Company, et al., now pending in the District Court of the United States for the Southern District of New York, or until that case is otherwise terminated.

HOMER S. CUMMINGS.
Attorney General of the United States.
JOHN J. BURNS.
General Counsel,
Securities and Exchange Commission.
ROBERT E. KLINE, JR.,
Attorney for Defendants.

34 In Supreme Court of District of Columbia

Answer of plaintiff to defendants' motion for a stay, etc.

Filed December 12, 1935

* * * * * * *

Plaintiff, The North American Company, in response to the Motion filed herein and served upon its counsel of record December 7th, 1935, requesting a Stay of proceedings in the above entitled cause involving the validity of the Public Utility Holding Company Act of 1935 "until the validity of said Act has been determined by the Supreme Court of the United States in the case of Securities and

Exchange Commission vs. Electric Bond and Share Company et al., now pending in the District Court of the United States for the Southern District of New York, or until that case is otherwise terminated", respectfully says:

First. That this Court has no discretionary power or jurisdiction to grant the stay requested for the reasons that, as hereinafter in Paragraphs Second and Third more fully set out, the issues of fact and law involved in the case at bar and those in said Electric Bond and Share Company case are so dissimilar and the operations of the two companies and their respective subsidiaries are so different that, as plaintiff has been informed by its counsel and believes and alleges, a decision in said Electric Bond and Share Company case will not settle the questions of fact and law raised by the bill of complaint filed in the case at bar or determine the rights of this plaintiff under the Constitution of the United States.

Second. It is apparent from a comparison of the Government's bill of complaint in the Electric Bond and Share Company case (a copy of which is attached hereto as Exhibit A) with the bill of complaint filed by the plaintiff herein that the issues in the two cases are entirely dissimilar.

The Government's bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of the entire Act, but only of two subsections of one section of the Act, neither of which relates to any of the regulatory or other drastic provisions of said Act. The bill of complaint against the Electric Bond and Share companies requests only (1) that the defendants be compelled to register with the Commission under Section 4 (b) of the Act and (2) that they be enjoined from engaging in certain of the activities enumerated under Section 4 (a) of the Act. The activities so enumerated consist of selling, transmitting or distributing, or owning or operating utility assets for the transmission or distribution of gas or electricity in interstate commerce and using the mails or instrumentalities of interstate commerce to negotiate or perform service, sales or construction contracts or to engage in any business of interstate commerce or to own or control securities of a subsidiary company that does any of the foregoing, unless the company registers with the Commission.

Section 32 of the Act provides that—

"If any provision of this title or the application of such provision to any person or circumstances shall be held invalid, the remainder of the title and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby."

Plaintiff has been informed by its counsel and believes and alleges that the Government will contend that the issue of the constitutionality of Sections 4 (a) and (b), which is the sole constitutional issue involved in the Electric Bond and Share Company case, is a separable and distinct issue from the constitutionality of the remaining provi-

sions of the Act, and that consequently a determination by any court of the constitutionality of Sections 4 (a) and (b) as applied to the Electric Bond and Share Company group cannot, under Section 32 of the Act, affect or determine in any manner the constitutionality of the other provisions of the Act as applied to the plaintiff company in the case at bar. Thus, the bill of complaint against the Electric Bond and Share companies does not raise for the determination of the Court the most vital and important issues which are raised by this plaintiff in the case at bar.

The Government's complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of Section 11 (b), the "death sentence" provisions of the Act, which give to the Commission an almost uncontrolled discretion to require plain-
36 tiff to dispose of its investments, direct or indirect, in the stocks and securities of public utility companies, holding companies, and in companies not engaged in business either as public utility companies or holding companies, and under which the Commission is empowered and directed to paralyze and dismember plaintiff's business and to enforce its complete disintegration and destruction.

The bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of Sections 6 and 7 of the Act, which give to the Commission complete and unrestricted control over the issue and sale of securities of the plaintiff, which would seriously interfere with and hamper the board of directors and officers of plaintiff in the proper conduct of plaintiff's business.

The bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of Sections 9 and 10 of the Act, giving to the Commission complete and unlimited control over future acquisitions of property by the plaintiff, or of the provisions which prohibit plaintiff from acquiring any property or securities which will not tend toward the development of an "integrated public utility system."

The bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of other sections of the Act which give the Commission complete and unlimited control over practically every phase of plaintiff's business, including the declaration of dividends, loans to subsidiaries and other internal corporate affairs.

The bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of the numerous provisions of the Act giving the Commission practically unlimited powers to make investigations of the plaintiff's affairs and to require compliance with the most detailed accounting rules, submission of reports and other papers of the most comprehensive and detailed character with respect to practically every phase and aspect of plaintiff's business, including those which have not the remotest connection with or any effect on interstate commerce.

The constitutionality of these provisions of the Act is directly raised in the case at bar but is not raised at all in the Government's bill of complaint against the Electric Bond and Share companies,
37 and these, among others, are the provisions of the Act which threaten the imminent disruption and destruction of plaintiff's business and which will result inevitably in irreparable loss and damage to plaintiff and its stockholders.

Third. The Government's bill of complaint against the Electric Bond and Share companies clearly recognizes that the controlling issue in that case is one to be determined on the basis of specific facts relating to the character of that particular Company's activities and the nature of its business. It contains very detailed and full statements of the activities and business of the Electric Bond and Share group of companies, particularly in an attempt to show that those defendants are engaged in interstate commerce. It alleges that the defendant Electric Bond and Share Company is the top holding company of the five additional defendants, American Gas and Electric Company, American Power and Light Company, Electric Power and Light Corporation, National Power and Light Company, and United Gas Corporation, these five companies being intermediate holding companies, all controlled by Electric Bond and Share Company; that the American Gas and Electric Company system has many public utility subsidiary companies, operating in many states and owning and operating utility assets by which electric energy is transmitted in interstate commerce into or from Virginia, West Virginia, Ohio, Kentucky, Tennessee, North Carolina, Michigan, Indiana, Pennsylvania, and other states; that the American Power and Light Company system has many public utility subsidiary companies, operating in many states and owning and operating utility assets by which electric energy is transmitted in interstate commerce into or from Oregon, Washington, Idaho, Montana, Nebraska, Iowa, and other states, and by which gas is transmitted in interstate commerce into or from Oregon, Washington, Minnesota, Wisconsin, New Mexico, Arizona, and other states; that the Electric Power and Light Company system has many public utility subsidiary companies, operating in many states and owning and operating utility assets by which electric energy is transmitted in interstate commerce into or from Louisiana, Mississippi, Arkansas, Tennessee, Idaho, Oregon, Nevada, Utah, and other states; that the United Gas Company system has several public utility subsidiary companies, operating
38 in many states and owning and operating utility assets by which gas is transmitted in interstate commerce into or from Florida, Alabama, Mississippi, Louisiana, Texas, Republic of Mexico, and other states; that the National Power and Light Company system has many public utility subsidiary companies, operating in many states and owning and operating utility assets by which electric energy is transmitted in interstate commerce into or from Pennsylvania, North and South Carolina, Tennessee, Alabama, Texas, New Jersey, New York, Virginia, and other states.

The Government's bill of complaint in that case further alleges that the Electric Bond and Share Company and American Gas and Electric Company so dominate and control all of their subsidiary companies engaged in such interstate transmission of electricity and gas that those companies are themselves, in their own corporate capacity, engaged in the transmission in interstate commerce of electric energy and manufactured and natural gas.

The bill of plaintiff, on the other hand, shows that the public utility subsidiary companies of plaintiff comprise in the main, electric properties, with some small amount of gas and transportation properties centered only in Cleveland, Milwaukee, St. Louis, Washington, Detroit, San Francisco, Central Illinois, Central Iowa, and parts of Kansas; that none of the public utility companies in which plaintiff owns stock own or operate utility assets for transmission of electric energy in interstate commerce, and that the subsidiary companies of plaintiff which do own or operate utility assets for such transmission engage in such activities merely as an incidental part of their predominant intrastate business.

The Government's bill of complaint against the Electric Bond and Share companies further alleges that Electric Bond and Share Company has negotiated, entered into, and is performing contracts with operating subsidiaries of American Power and Light Company, Electric Power and Light Corporation, and National Power and Light Corporation. The bill enumerates thirty-one detailed matters of operation and management covered by the alleged contracts. It is alleged that these contracts "contemplate and cause and their performance will involve and depend upon, continuance and regular intercourse in interstate commerce and frequent transportation
39 in interstate commerce of information in the form of books, periodicals, apparatus, papers, pamphlets, reports and forms by and between the officers of the Electric Bond and Share Company in New York City and the client subsidiary companies in 31 states; that in these contracts defendant, Electric Bond and Share Company, undertakes to send as frequently as may be necessary from its principal offices in New York to the companies served, sponsors, operating specialists, and engineers, to confer, advise, and assist with respect to the problems of the operating companies, and that this obligation contemplates and its performance will necessitate transportation in interstate commerce * * * that Electric Bond and Share Company in the form of its wholly owned subsidiary, Phoenix Engineering Corporation, will regularly purchase and ship construction goods in interstate commerce as contemplated in, and caused by, the construction contracts negotiated and entered into as hereinabove set forth * * * that the rendering of the interstate services as above alleged and compensation in the manner alleged will constitute business in interstate commerce."

In substance, the same allegation is made with respect to the defendant American Gas and Electric Company.

As contrasted with the extensive and comprehensive services thus alleged to be rendered by Electric Bond and Share Company and American Gas and Electric Company to their subsidiaries, the bill of plaintiff in the case at bar shows that plaintiff is a party to no construction, sales or service contracts with any of its subsidiary companies and renders or performs no such services for its subsidiaries.

The Government obviously regards these facts as material and necessary to any judicial determination of the constitutionality of the Public Utility Act of 1935 as applied to the Electric Bond and Share companies. If the Government did not so regard them it would not have devoted the greater part of its long and complicated bill of complaint to the allegation of such facts in a case which it alleges it is prosecuting for the purpose of having such constitutionality determined. The conclusion is inevitable that the motion to stay must be denied in the case at bar, since there are in this case no such comparable facts.

40 Fourth. Since the Act may be held constitutional as to certain holding companies and not as to others, depending on the character of the activities of the particular holding company and the nature of its business, the extent and character of its control and domination over its subsidiaries, and the extent to which the company and its subsidiaries are engaged in interstate transmission of services or of electric energy or gas, then it is vitally important both to the industry and to the Government that the litigation being carried forward should not be limited to the single Electric Bond and Share Company case, which presents a situation which is not at all typical of the industry generally, and which in many important respects is very different from the situation presented by the history and activities and corporate set-up of the holding company system of the plaintiff in the case at bar and of many other holding company systems.

Fifth. The Government certainly has no right, legal or equitable, to request special favors of this Court, which require this Court to ignore the rights of other litigants. The Government is not and cannot be entitled to pick its own particular case, in a court of its own choosing, and involving only one or two narrow issues of its own devising, and then have all other cases in all other courts stayed, while the Government takes a year or more to carry its hand picked case to the Supreme Court, leaving all other companies, with other issues and rights, of vital importance to them and their stockholders, to wait indefinitely for a determination of their special and individual rights.

Sixth. Plaintiff is advised by counsel and avers that it has a statutory and constitutional right to have the questions of fact and law raised in the complaint in the case at bar speedily determined and conclusively adjudicated by the Courts of this jurisdiction and the Supreme Court of the United States, without reference to what may be done by the courts of some other jurisdiction in a different

ease involving different parties and facts and issues, and that any stay of its right to such prompt ascertainment of its constitutional and property rights in this proceeding will cause plaintiff great and irreparable loss and damage, will deprive it of a speedy trial
41 and adjudication as guaranteed by the Constitution of the United States, and will deny to it due process of law and the equal protection of the laws.

Seventh. Plaintiff further says that the ends of justice require that it be allowed to proceed with this case in the orderly manner provided by the rules of this Court, and because of the great importance of the questions and the immense pecuniary interests involved, it offers to cooperate with the defendants in every possible way to procure the hearing and determination by the courts of the issues of fact and law which may be raised in a representative group of test cases, in order that the constitutionality of the Public Utility Holding Company Act of 1935 may be promptly presented and determined.

JOHN C. HIGGINS,
JOHN S. FLANNERY,
Attorneys for Plaintiff.
SULLIVAN & CROMWELL,
48 Wall Street, New York, N. Y.,
Of Counsel.

[*Duly sworn to by James F. Fogarty, jurat omitted in printing.*]

42 In Supreme Court of District of Columbia

Opinion on motion for stay

* * * * * * *

The defendants in these cases have moved for a stay of proceedings pending the determination by the Supreme Court of the United States of the validity of the Public Utility Holding Company Act of 1935 in the case of Securities and Exchange Commission v. Electric Bond and Share Company, et al., brought by the former in the District Court of the United States for the Southern District of New York. It appears that in addition to the present suits now pending in this Court brought to enjoin the carrying out of the provisions of that act at least fifty more have been brought in other District Courts. Counsel seem to agree that these latter cases are defective for want of jurisdiction, and that it is likely that if dismissed in the Courts where they are now pending they will be filed in this Court.

The defendants urge that it is practically impossible for them to defend all these suits with the care and ability with which they should be defended; that the plaintiffs are represented by counsel who are specialists and experts in the matters involved in these cases; that the government could with difficulty obtain an adequate number

of specially qualified counsel to handle these cases: that the constitutionality of the Act in question will be determined in the Electric Bond and Share case, with reasonable speed and in a suit authorized by the Act, in which no question of jurisdiction can arise.

The plaintiffs oppose the motion upon the grounds that the Court is without power to grant the stay: that if the granting of the stay were a question of discretion, it would be an abuse of discretion to grant it: that many of the questions as to the constitutionality of the Act involved in these cases are not involved in the Electric Bond and Share case, and that even if the defendants were temporarily enjoined the plaintiffs would in the meantime suffer irreparable injury by the existence of this act upon the statute books, which would affect the validity of their contracts, their transfer of stocks, and other similar matters.

The bills in these cases, which were filed a few days later than the Electric Bond and Share case with the exception of the
43 North American Company case which was filed on the same day, seek to enjoin the defendants from attempting to compel the plaintiffs to comply with this act or to enforce any of its provisions against them, or making applicable to the plaintiffs any rule or regulation under the Act, or instituting any prosecution or action against the plaintiffs, for any violation of the Act or order under it and that the Act be declared unconstitutional in toto.

Before any of these suits were filed the Securities and Exchange Commission issued regulations expressly permitting a holding company when registering to reserve any legal or constitutional right and to stipulate that its registration should be void and of no effect in the event that such a reservation should be judged invalid or ineffective: the Attorney General and the Securities and Exchange Commission announced that the Commission would take the initiative to test the Act in a civil suit, that until the validity of the Act had been determined by the Supreme Court in such a civil suit neither the Attorney General nor the Commission would seek to enforce the criminal penalties of the Act, and that even after such determination they would not seek to exact penalties for earlier offenses: and the Postmaster General announced that even if he had the authority, he would not exclude any company from using the mails because of any violation of the Act pending the judicial determination of its validity by the Supreme Court.

In addition the defendants have offered to submit to a temporary injunction pending a decision by the Supreme Court in the Electric Bond and Share case.

As to the power of the Court to grant the stay I have little question and I think it is within the discretion of the Court. Mr. Chief Justice Hughes, in the case of Enelow v. N. Y. Life Insurance Co., 293 U. S. 379, 381, referred to the exercise of equitable jurisdiction in granting or refusing an injunction and distinguished it from a mere "stay of proceedings which a court of law, as well as a court of

equity, may grant in a cause pending before it by virtue of its inherent power to control the progress of the cause so as to maintain the orderly processes of justice."

This is not an attempt to enjoin a multiplicity of suits, nor a stay as a matter of right by reason of a former suit pending. The
44 Court may grant a stay, or extend the time for pleading, by reason of the absence or illness of parties or counsel, the convenience of the Court, the fact that the issues in a case may be simplified by decisions in other suits, and it would, I think, be impossible to define all the conditions which might justify a Court, in its discretion, in staying the further progress of a case, not finally, but temporarily.

In the instant case the relief sought by the plaintiffs is first a relief by injunction against the defendants, and second a declaratory judgment to the effect that the Public Utility Holding Company Act violates the Constitution of the United States and that the Act and each and every part thereof is invalid, null, and void.

As to the injunctive relief sought the defendants in effect consent to a temporary injunction embracing the same injunctive relief which the plaintiffs seek upon a final hearing. So long as this temporary injunction is in force each of the plaintiffs will obtain the relief sought by injunction. They object to this, however, upon the ground that they will in the meantime suffer irreparable loss by the existence of the statute, resulting from the doubt and uncertainty as to the legality of practically everything that they may do in the ordinary and usual course of their business after December 1, 1935, resulting, as they claim, in an almost complete paralysis of their corporate activities. They claim that a decision of the Electric Bond and Share case will not solve the questions raised in the suits brought by them in this Court for the former involves only a few provisions of the Act, while the latter cover the Act in its entirety, although the plaintiffs claim in their bills that the different parts of the Act are inseparable and if void in part, it is void in toto. They seek a declaratory judgment that the Act be declared void, not in so far as it relates to the interests of the plaintiffs, but apparently as a general or abstract proposition. But as well said by counsel for the plaintiffs in their brief:

"* * * Courts do not declare statutes constitutional or unconstitutional as such. The judicial function is to determine whether or not under the facts proven at the trial, the application of the legislative enactments to the litigant before the Court invades his constitutional rights."

I do not understand that under the declaratory judgment
45 acts, an act of Congress is a res, and that the Courts determine its constitutionality as if the proceedings were one in rem. If the highest Court declares in any particular case that an act of Congress is beyond the powers granted by the Constitution, that

opinion will be followed by the lower Courts in every case that comes before them. Apart from the injunctive relief sought in this case it is difficult to see with whom any remaining controversy may be, unless it might be with the United States, and in that event the Court would have no jurisdiction.

If the defendants, as they state they probably will do, in the event these suits are not stayed, permit them to go by default, it is difficult to see how the plaintiffs would be any better off than if the suits were stayed. If this Court should hold the Act unconstitutional, the final relief would afford them little advantage over the temporary relief now offered them. It would seem that injunctions against the present defendants might not bind their successors in office and if the Supreme Court should afterwards hold the Act constitutional, their success in the instant suits would avail them little. Ex Parte La Prade, 289 U. S. 444.

Even a consent degree may be modified in invitum where the situation of the parties and conditions have so changed as to render the enforcement of the decree inequitable. United States v. Swift & Company, 286 U. S. 106. And in any event a bill of review for error of law apparent on the record would lie. Rudolph v. Hunt, 52 App. D. C. 343. The plaintiffs seek an early decision by the Supreme Court but they could not appeal from a decree of this Court in their favor, and as said before, I cannot see how their real interests will not be protected by the temporary injunction to which the defendants offer to submit. A decision by the Supreme Court in the Electric Bond and Share case, even if it should not dispose of all the questions involved, would certainly narrow the issues in the pending cases and assist in the determination of the questions of law involved.

The plaintiffs have declined to register with the Securities and Exchange Commission under sec. 5 of the Act, although the Commission has issued regulations permitting a holding company, when registering, to reserve any legal or constitutional right, and to stipulate that its registration would be void, if the reservation should be judged ineffective; and it would seem that they might have registered irrespective of this regulation, without impairing their constitutional rights. As said by Judge Coleman in his opinion in the American States Public Service Company case in the United States District Court at Baltimore:

"Of course, although registering under the Act, the Trustees might still preserve any constitutional right." Citing Union Pacific R. R. Co. v. Public Service Commission, 248 U. S. 67, and Power v. Saunders, 274 U. S. 490, the latter case being especially in point.

The offer of the plaintiffs to a trial of one or two of the instant cases and suspending proceedings in the others has not been consented to by the defendants. They, however, cannot answer for the fifty odd cases now pending in other courts, which, it seems probably

will be transferred to this Court. I think that the plan proposed by the defendants would give all the plaintiffs all the protection needed pending a decision by the Supreme Court and save great amount of labor, time and expense.

Upon the whole I am of the opinion that the motion of the defendants should be sustained, conditioned upon a diligent and active prosecution of the Electric Bond and Share case. In view of their assurances given before the filing of these suits, however, it would hardly seem necessary to issue a formal injunction, unless the plaintiffs insist upon it.

It might be added that I have been informed that the appeal in the American States Public Service Company case will be shortly argued in the Court of Appeals of the fourth Circuit and a decision by the Supreme Court on the constitutionality of the Act may be had in that case some time before any of the other cases involving this act reach the Supreme Court. The opinion of Judge Coleman in that case, holds the Act unconstitutional and void in all respects, and if considered in the nature of a declaratory judgment might render it unnecessary for other Courts to enter similar judgment pending a decision by the Supreme Court.

JENNINGS BAILEY,
Justice.

47 In Supreme Court of District of Columbia

Order staying further proceedings herein

Filed January 9, 1935

* * * * * * *

This cause coming on to be heard upon motion of the defendants to stay further proceedings herein filed December 7, 1935, the Court having considered the pleadings and the arguments of counsel, and briefs having been submitted herein, it is this 9th day of January, 1936:

Ordered, adjudged and decreed, that further proceedings herein be and are hereby stayed, upon the terms and conditions as set forth in the Opinion of this Court in this cause filed herein the 6th day of January 1936.

JENNINGS BAILEY,
Justice.

No objection to form.

Exception to above order is hereby taken and plaintiff's intention is hereby noted to apply for a special appeal herein to the United States Court of Appeals for the District of Columbia.

J. S. FLANNERY,
Attorney for Plaintiff.

In United States Court of Appeals for the District of Columbia

January term, 1936

No. 2559, original. Equity 60,136

THE NORTH AMERICAN COMPANY, PETITIONER

vs.

JAMES M. LANDIS, GEORGE C. MATHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY, ETC.

Order allowing special appeal

Filed February 18, 1936

On consideration of the petition for allowance of a special appeal in the above entitled cause from the order of the
48 Supreme Court of the District of Columbia entered therein on January 9, 1936, by Mr. Justice Jennings Bailey,

It is ordered by the Court that the petition be and it is hereby granted and a special appeal allowed as prayed.

Per Mr. Chief Justice MARTIN.

February 17, 1936.
A true copy.
Test:

HENRY W. HODGES,
Clerk.

By MCNCURE BURKE,
Deputy Clerk.

[SEAL]

In Supreme Court of District of Columbia

Notice of motion

Filed February 19, 1936

* * * * * * *

Please take notice that at 9:30 o'clock on February 25, 1936, the defendants James M. Landis, George C. Mathews, Robert E. Healy, James D. Ross, Homer Cummings, and James A. Farley will present the accompanying motion to Justice Bailey in Chambers.

HOMER CUMMINGS,
Attorney General of the United States.
J. L. R.
JOHN J. BURNS,
General Counsel, Securities and Exchange Commission.
J. L. R.

Service of a copy of the aforesaid motion with the accompanying affidavit is hereby acknowledged.

_____.

Dated February —, 1936. Washington, D. C.

In Supreme Court of District of Columbia

Motion as to affidavit and exhibits

Filed February 19, 1936

* * * * * * *

The defendants James M. Landis, George C. Mathews, Rob-
49 ert E. Healy, James D. Ross, Homer Cummings, and James A. Farley respectfully represent to this Honorable Court:

1. That on February 17, 1936, the United States Court of Appeals for the District of Columbia allowed a special appeal from the order of this Court, entered on January 9, 1936, staying the proceedings in the above entitled cause upon the terms and conditions set forth in the opinion of this Court filed January 6, 1936.

2. That the facts set forth in the accompanying affidavit of Homer Cummings, Attorney General of the United States and one of the attorneys for the defendants, were presented to this Court at the hearing of the above entitled cause and in the printed briefs filed therein by said defendants, and that the exhibits appended to said affidavit are corroborative of the facts set forth therein.

3. That the said affidavit and exhibits are a convenient and appropriate method of incorporating in the record the facts upon which the opinion and order of this Court were rendered.

4. That there is also appended to said affidavit a copy of the answer and cross-bill filed on January 29, 1936, by the twenty-two defendants in the case of Securities and Exchange Commission v. Electric Bond and Share, et al.

Wherefore defendants move this Honorable Court to order and direct that the said affidavit together with the exhibits appended thereto be included in the printed transcript of the record.

HOMER CUMMINGS,
Attorney General of the United States.
JOHN J. BURNS,
General Counsel, Securities and Exchange Commission.

In Supreme Court of District of Columbia

Affidavit of Homer Cummings

Filed February 19, 1936

* * * * * * *

Homer Cummings, being first duly sworn on oath, deposes and says as follows:

1. He is Attorney-General of the United States and one of the attorneys for the defendants in the above entitled causes.

50 2. He makes this affidavit in support of the motion of the defendants in the above entitled causes to stay further proceedings therein until the validity of the Public Utility Holding Company Act of 1935 (herein referred to as the "Act") has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission v. Electric Bond and Share Company, et al., now pending in the United States District Court for the Southern District of New York. All of the facts set forth in this affidavit with the exception of Exhibit J described in paragraph 15 were called to the attention of the Court and of opposing counsel in the briefs and oral arguments heretofore submitted on behalf of the defendants in the above entitled causes.

3. On October 9, 1935, the Securities and Exchange Commission promulgated a rule known as "Holding Company Act Rule 4", and on November 22, 1935, amended said rule. A true and correct copy of said rule, as amended, is attached hereto, marked Exhibit A and made a part of this affidavit.

4. On November 21, 1935, affiant, as Attorney General, addressed and transmitted to all United States Attorneys a letter designated as "Circular No. 2780", a true and correct copy of which is attached hereto, marked Exhibit B and made a part of this affidavit.

5. On December 7, 1935, affiant, as Attorney General, addressed and transmitted to all United States attorneys a letter designated as "Circular No. 2786", a true and correct copy of which is attached hereto, marked Exhibit C and made a part of this affidavit.

6. On November 22, 1935, the Securities and Exchange Commission issued to the newspapers for immediate release a press release known as "Release No. 22", a true and correct copy of which is attached hereto, marked Exhibit D and made a part of this affidavit.

7. On December 4, 1935, James A. Farley, Postmaster General of the United States, addressed and transmitted to all postmasters a letter, a true and correct copy of which is hereto attached, marked Exhibit E and made a part of this affidavit.

8. On November 26, 1935, the Securities and Exchange Commission filed its bill of complaint in the District Court of the

51 United States for the Southern District of New York against the Electric Bond and Share Company, American Gas and

Electric Company, American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation, and United Gas Corporation all of whom have their principal place of business in New York. A true and correct copy of the bill is attached hereto, marked Exhibit F and made a part of this affidavit. The Electric Bond & Share Company, controlling nearly 15% of the privately owned electric utility industry in the country, is the best known and one of the oldest of the great holding company systems, and comes in contact with the Act at more points than any other holding company system. Each of the five subsidiary systems joined as parties defendant is comparable in size to the largest of the systems of the plaintiffs in the cases before this Court. On December 21, 1935, pursuant to leave of court, the Securities and Exchange Commission filed its amended and supplemental bill of complaint in said cause and included sixteen additional subsidiaries as defendants. A true and correct copy of said amended bill is attached hereto, marked Exhibit G and made a part of this affidavit. Affiant is informed and believes, and, therefore, states that all of the allegations contained in said amended and supplemental bill of complaint are true.

9. Prior to December 12, 1935, forty-nine proceedings had been filed, and were on said date pending in the District Courts of the United States for thirteen districts seeking an adjudication of the constitutionality of the Public Utility Holding Company Act of 1935. Forty-four such proceedings were filed by electric and gas utility holding companies against members of the Securities and Exchange Commission and other officers of the United States, seeking to enjoin the enforcement of said Act against the respective plaintiffs, and, in most of the cases, further seeking declaratory judgments declaring said Act to be unconstitutional. Five of said proceedings involved litigation between electric or gas utility holding companies, or their receivers or trustees, and stockholders or other private litigants in which proceedings a declaration of the unconstitutionality of said Act is sought. Attached hereto, marked Exhibit H, is a
52 schedule setting forth the names of the plaintiffs in said proceedings, the court in which each such proceeding is pending, and the date upon which the bill of complaint therein was filed.

10. On November 29, 1935, Messrs. Winthrop, Stimson, Putnam & Roberts, attorneys of counsel for Tennessee Electric Power Company, one of the plaintiffs in the above entitled causes, addressed and transmitted to affiant a letter, a true and correct copy of which is hereto attached, marked Exhibit I and made a part of this affidavit.

11. The following facts appear from the so-called Splawn Report (report of the Committee on Interstate and Foreign Commerce of the House of Representatives, made pursuant to H. Res. No. 59, 72nd Cong., 1st Sess., and H. J. Res. No. 572, 72nd Cong., 2nd Sess., House Report No. 827, Part 3):

(a) The North American Company, one of the plaintiffs in the above entitled causes, owns all or substantially all of the voting stock of the North American Edison Company, its principal subholding company, which, in turn, owns all of the voting stock of Union Electric Light and Power Company. Union Electric Light and Power Company, through itself and its subsidiary companies, most of which are wholly owned, transmits power generated at the Keokuk Dam in the State of Illinois, in interstate commerce, into the States of Missouri and Iowa. The North American Company through intermediate holding companies, also controls other companies which transmit substantial amounts of electric energy across state lines. About one-fifth of the total quantity of electric energy generated by public utility companies which form a part of the North American Company System is sold in interstate commerce. (Splawn Report, Part 3, page 720.)

(b) Subsidiary operating companies of the United Light & Power Company transmit considerable quantities of electric energy and manufactured and natural gas in interstate commerce. (Splawn Report, Part 3, page 930.)

(c) Operating subsidiaries of the American Water Works and Electric Company transmit substantial quantities of electric energy in interstate commerce. (Splawn Report, Part 3, pp. 50–51.)

(d) The American Water Works and Electric Company and the United Light and Power Company, respectively, have entered into service, sales and construction contracts (as defined in the
53 Public Utility Holding Company Act of 1935) with subsidiary operating companies, and North American Light and Power Company, a subsidiary holding company of The North American Company, has entered into service, sales and construction contracts with its subsidiaries. (Splawn Report, Part 3, page 52 et seq., page 923 et seq., page 743.)

12. West Penn Electric Company, which is a subsidiary of American Water Works and Electric Company, and controls all of the electric utility properties in the American Water Works and Electric Company System, has instituted proceedings against the Securities and Exchange Commission and others in the United States District Court for the District of Maryland to enjoin the enforcement of the Act. North American Edison Company and North American Light & Power Company, two large intermediate holding company subsidiaries of the North American Company, have instituted proceedings against the Securities and Exchange Commission and others in the United St[illegible] District Court for the District of Delaware to enjoin the enforcement of the Act. The New Empire Corporation and Central States Electric Company, holding companies which are affiliates of the North American Company and included in the North American System have not filed any independent proceedings or joined in any proceedings filed by subsidiary companies in the system.

13. Commonwealth & Southern Corporation, of which the Tennessee Electric Power Company, one of the plaintiffs in the above entitled causes, is a subsidiary, has instituted proceedings against the Securities and Exchange Commission and others in the United States District Court for the District of Delaware to enjoin the enforcement of the Act.

14. The Columbus Railway Power and Light Company, a subsidiary of the United Light & Power Company, one of the plaintiffs in the above entitled causes, has instituted proceedings against the Securities and Exchange Commission and others in the United States District Court for the Southern District of Ohio to enjoin the enforcement of the Act.

15. On January 29, 1936, after the opinion and order in this cause, the Electric Bond and Share Company and twenty-one other defendants filed their answer and crossbill in the case of Securi-
54 ties and Exchange Commission v. Electric Bond and Share et al., a true and correct copy of which is attached hereto, marked Exhibit J.

HOMER CUMMINGS.

Subscribed and sworn to before me this 19th day of February 1936.

[SEAL]

UGO J. A. CARUSI,
Notary Public.

Exhibits

Filed February 19, 1936

Copy

Exhibit A to affidavit

Rule 4. Reservation of constitutional or legal rights.—Any person filing, signing, or certifying to, any notification, statement, application, declaration, report, or other document pursuant to the Act, the Rules and Regulations, or any order of the Commission under the Act or the Rules and Regulations, may include therein in behalf of such person or of any other person affected thereby an express reservation of, and refusal to waive, any constitutional or legal rights.

If the reservation or refusal to waive asserted by or on behalf of any such person or persons shall be held invalid or inoperative by any court of competent jurisdiction, such filing, signing, or certifying may, at the option of any such person or persons, be deemed to have been void and of no effect from any date specified in written notice given to the Commission, by or in behalf of such person or persons, except that the validity of transactions which otherwise might be impaired by reason of the voidance and ineffectiveness of such filing, signing, or certifying shall not be affected thereby.

The acceptance of any order, rule, or regulation, or the compliance with any provision of the Act, of the Rules and Regulations, or of any order or direction of the Commission shall not be deemed a waiver of any constitutional or legal rights.

55 *Exhibit B to affidavit*

DEPARTMENT OF JUSTICE,
Washington, D. C., November 21, 1935.

Circular No. 2780

To all United States Attorneys:

The Public Utility Holding Company Act of 1935 makes specified transactions by the use of the mails or instrumentalities of Interstate Commerce illegal for certain public utility holding companies after December 1, 1935, unless such companies are registered with the Commission.

The Edison Electric Institute, a trade organization, whose membership includes a number of utility holding companies, has announced that it has retained counsel to contest the constitutionality of the Act. Consequently, it is probable that a number of companies will fail to register under the Act.

It is, of course, not the purpose of the Government to harass the utility industry with a needless multiplicity of suits. Equally, however, there is no public interest to be served by vexing the Government with a multiplicity of injunction suits which might embarrass and harass the Government in defending the constitutionality of the Act and which might result in the presentation of the issue of constitutionality on the basis of an inadequate record or a record not fairly typical of the situations covered by the Act.

Section 18 of the Act places the duty of investigating violations of the Act upon the Securities and Exchange Commission, which may transmit evidence "to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings."

In enforcing the Act it is proposed promptly to institute civil proceedings against one or more large and important companies who may fail to register to enforce compliance with its provisions and to seek decisions from the Supreme Court sustaining the validity of the act. In the meanwhile it is not proposed to institute
56 criminal proceedings, and if later it should become necessary to institute criminal proceedings against any company, it is not the intention of this department to seek to exact penalties for earlier offenses which might unduly penalize the investors in the offending company.

In view of the foregoing, the Department suggests that you refrain from bringing or threatening to bring any criminal proceedings under the Act. If any injunction proceeding is instituted against you, you will thus be in a position to disclaim any present

threat of any criminal proceeding under such Act. Such disclaimer should be sufficient to dispose of any restraining order which may be sought against you under the authority of Spielman Motor Sales Co. v. Dodge, 295 U. S. 89, decided April 29, 1935; Sparks v. Mellwood, 74 F. (2d) 695 (C. C. A. 6th, 1934); Richmond Hosiery Mills v. Camp, 74 F. (2d) 200 (C. C. A. 5th, 1934); Campbell v. Medalie, 71 F. (2d) 671 (C. C. A. 2d, 1934); McKee v. Rudolph, 12 F. (2d) 148 (C. A. D. C., 1926); Cave v. Rudolph, 287 F. 989 (C. A. D. C., 1923).

You will promptly inform this Department, nevertheless, of any action which may be instituted in your District, whether or not you are made a party, to attempt to test the validity of the Act.

HOMER CUMMINGS,
Attorney General.

Exhibit C to affidavit

DEPARTMENT OF JUSTICE,
Washington, D. C., December 7, 1935.

Circular No. 2786

To all United States Attorneys:

(1) In Circular No. 2780, November 21, 1935, you were advised that the Government would promptly institute civil proceedings to enforce compliance with the Public Utility Holding Company Act of 1935; that in accordance with the discretion vested in the Attorney General under section 18 (f) of that Act, the Attorney General would not sanction the institution of criminal proceedings for
57 violations of the Act before the validity of the Act was judicially determined by the Supreme Court, nor would he thereafter sanction the exaction of penalties for prior offenses; and that you should refrain from bringing or threatening to bring any criminal proceedings under the Act.

(2) On November 26, the Government instituted a civil suit in the Southern District of New York against Electric Bond and Share Company and five of its principal subsidiary holding companies to enforce compliance with the Act, and shortly thereafter consented to the intervention in that suit of sixteen additional subsidiary holding companies in the Electric Bond and Share system. The major issues concerning the constitutionality of the Act, in so far as such issues may legally be raised at this time, will be promptly, effectively, and fairly tested and adjudicated in this suit.

(3) The Attorney General and the Securities and Exchange Commission have taken the position, on the authority of Union Pacific R. R. Co. v. Public Service Commission, 248 U. S. 67; Terral v. Burke Construction Co., 257 U. S. 529; Power Manufacturing Co. v. Saunders, 274 U. S. 490, that registration does not constitute a waiver

of any constitutional rights. In its Holding Company Act, Release No. 22, November 22, 1935, the Securities and Exchange Commission reiterated that "the Commission under its rule-making power expressly permits the registrant to reserve his constitutional rights", and further announced that "the Commission is prepared to go further and accept a notification that expressly stipulates that the notification of registration will at the option of the registrant be deemed void if registrant's reservation of its constitutional rights is adjudged void or ineffective."

(4) Despite the efforts of the Government to test the validity of the Act in an orderly and economical manner, and in the meanwhile to safeguard every legal and constitutional right of the private interests affected, not only have a multitude of unnecessary suits been brought against government officials, but a number of stockholders' suits have been brought against various companies with a view to testing the constitutionality of the Act in proceedings in which the Government or its officers are not even parties. In light of the action taken by the Government to safeguard the rights and interests of both registering and non-registering companies, it may be questioned whether such stockholders' suits are brought in good faith and are free from collusion as is required under Equity Rule 27 as interpreted by the Supreme Court. Corbus v. Gold Mining Co., 187 U. S. 455; Wathen v. Jackson Oil & Refining Co., 235 U. S. 635. It is true that there are cases where in the absence of collusion a stockholder has been allowed to sue to enjoin the payment of an allegedly unconstitutional tax where the company is threatening to pay the tax without protest and thereby (under the law then in force) threatening to deprive itself of any opportunity of subsequently recovering the tax. Pollock v. Farmers Loan & Trust Co., 157 U. S. 429; Brushaber v. Union Pacific Railroad Company, 240 U. S. 1. But such cases are not at all comparable to an action by a stockholder to enjoin the simple act of registration which involves no waiver of any constitutional right. The only other cases where such stockholders' suits have been permitted, Smith v. Kansas City Title and Trust Co., 255 U. S. 180, and Hill v. Wallace, 259 U. S. 44, are similarly inapplicable, for in each, if the statute challenged were unconstitutional, the action of the Directors sought to be enjoined was unlawful under state law or a clear abuse of their powers of management.

58

(5) The Government takes the position that any action by a stockholder to enjoin or to compel registration cannot bring into issue the question of constitutionality, but at most only the question of the good faith and prudent conduct of the management. The Government at the present time does not plan to intervene or take any part in any action brought by a stockholder to test the constitutionality of the Act.

(6) Inasmuch as it will in many cases be impossible for the District Attorneys to know of the existence of these suits, you are re-

quested to bring this circular to the attention of the Circuit Judges in your circuit and to the District Judges in your district so that they may be apprised of the Government's position in the event that any such stockholders' suits come before them.

HOMER CUMMINGS,
Attorney General.

59 *Exhibit D to affidavit*

For Immediate Release in Newspapers of Friday, November 22, 1935.

Securities and Exchange Commission, Washington

Holding Company Act

Release No. 22

The Securities and Exchange Commission today officially authorized the issuance of the following statement:

(1) The Public Utility Holding Company Act of 1935 makes specified transactions by the use of the mails or instrumentalities of Interstate Commerce illegal for certain public utility holding companies after December 1, 1935, unless such companies are registered with the Commission. To date the number of notifications of registration filed under the Act has been negligible. The Edison Electric Institute, a trade organization, whose membership includes many public utility holding companies subject to the Act, has announced that it has retained counsel to contest the constitutionality of the Act.

(2) Section 18 of the Act authorized the Commission to enforce compliance with the Act. And it is the purpose of the Commission to proceed promptly with the administration and enforcement of the law.

(3) However, it is the purpose of the Commission to proceed with the enforcement of the Act in an orderly and economical manner. The Commission will not harass the industry with a multiplicity of suits. And the Commission will resist any effort that may be made to vex the Government with a multiplicity of suits or to provoke litigation with a view of presenting the issue of constitutionality on the basis of an inadequate record or a record not fairly typical of the situations covered by the Act.

(4) If there is a general failure to register under the Act, the Commission will proceed promptly to bring civil proceedings against one or more large and important companies who may fail to register to enforce compliance with the Act and to seek decisions from the Supreme Court sustaining its validity. In the meanwhile, at
60 least for the immediate future and until further notice, the Commission does not intend to make any recommendations to

or requests upon the Department of Justice for the institution of proceedings to enforce criminal liabilities under the Act. The Commission understands that the Attorney General has sent a circular to District Attorneys setting forth the attitude of the Department of Justice.

(5) Counsel for the Commission is firmly of the opinion that registration does not constitute a waiver of any constitutional right which the registering company may have. And the Commission under its rule-making power expressly permits the registrant to reserve his constitutional rights. The Commission is prepared to go further and accept a notification that expressly stipulates that the notification of registration will, at the option of the registrant, be deemed void if registrant's reservation of its constitutional rights is adjudged void or ineffective. No possible ground in reason remains for any company to fail to file a simple notification and registration under these circumstances as a sheer precautionary matter for the protection of its investors.

Exhibit E to affidavit

To Postmasters

OFFICE OF THE POSTMASTER GENERAL.
Washington, December 4, 1935.

The Public Utility Holding Company Act of 1935 makes it unlawful for certain holding companies to use the mails for specified purposes after December 1, 1935, unless such companies are registered with the Securities and Exchange Commission. It is probable that a number of such holding companies will not register under the act.

The Attorney General in Department of Justice Circular No. 2780, sent to all United States attorneys on November 21, 1935, and the Securities and Exchange Commission in its Holding Company Act, Release No. 22 of November 22, 1935, have announced that it is not the intention of the Government to institute criminal proceedings under the act pending the authoritative adjudication of civil proceedings which will promptly be instituted by the Government under section 18 (f) of the act against one or more representative
61 companies to compel compliance with the act.

Whatever may be the authority, if any, of the Postmaster General to exclude from the mails matter sent in violation of the act, the Postmaster General does not intend to exclude any company from using the mails, at least not before the validity of the act is judicially determined by the Supreme Court. You will accordingly take no steps to exclude unregistered holding companies from the use of the mails.

JAMES A. FARLEY,
Postmaster General.

(The Postal Bulletin, Washington, December 5, 1935.)

Note

Exhibit F is same as Exhibit attached to Answer of Plaintiff to Defendants' Motion for a Stay, etc.

Exhibit G to affidavit

In the District Court of the United States for the Southern District of New York

In Equity. No. E 81–378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION, UNITED GAS CORPORATION, DEFENDANTS: AND POWER SECURITIES CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, EASTON CONSOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS

62 Amended and supplemental bill of complaint

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, Sitting in Equity:

The Securities and Exchange Commission brings this civil suit in equity by its solicitors, John J. Burns, General Counsel, and Robert H. Jackson, Special Counsel, against Electric Bond and Share Company, American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, United Gas Corporation; Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company, and Lehigh Power Securities Corporation, and respectfully represents to this Honorable Court as follows:

I

That on November 26th, 1935, the plaintiff filed its original bill of complaint herein. That on December 6th, 1935, an order was entered by this court in this cause granting leave to Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company, the Washington Water Power Company, Lehigh Power Securities Corporation, Pennsylvania Power and Light Company, and Easton Consolidated Electric Company to intervene herein as parties defendant and to file answers and cross-bills to plaintiff's bill of complaint. That plaintiff seeks no relief against intervenors, Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, The Washington Water Power Company, Pennsylvania Power & Light Company, and Easton Consolidated Electric Company, for reasons hereinafter appearing.

63

II

(1) That the following terms, wherever they appear herein, are used in the sense defined by Section 2 (a) of the Act: Public utility company; electric utility company; gas utility company; holding company; subsidiary company; holding company system; affiliate; registered holding company; security; voting security; utility assets; service contract; sales contract; construction contract.

(2) That the term "defendants" when used in this complaint, except when the context otherwise indicates, means:

Electric Bond and Share Company,
American Gas and Electric Company,
American Power & Light Company,
Electric Power & Light Corporation,
National Power & Light Company,
United Gas Corporation,
Power Securities Corporation,
Idaho Power Company,
Utah Power & Light Company,
United Gas Public Service Company,
Houston Gulf Gas Company,
The Montana Power Company,
Nebraska Power Company,
Pacific Power & Light Company, and
Lehigh Power Securities Corporation.

III

That it appears to the plaintiff Commission that the defendants and each of them since December 1, 1935, have engaged, are now engaged, and will continue to engage in acts and practices which constitute and will constitute a violation of the provisions of the Public Utility Act of 1935 and of the rules, regulations, and orders thereunder, and the plaintiff therefore brings this suit in its own right pursuant to section 18 (f) and section 18 (g) of Title I of the said Act, for the purpose of enjoining and restraining the defendants from violating the provisions of section 4 (a) (1), (2), (3), (4), (5), and (6) of the Act and for the purpose of requiring the defendants to register pursuant to the provisions of section 5 of the Act. That jurisdiction of this suit is conferred upon this Honorable Court by section 25 of the Act.

64 IV

That each of the defendants is a duly organized and existing corporation, their respective States of Incorporation being:

Defendant	State of Incorporation
Electric Bond and Share Company	New York
American Gas and Electric Company	New York
American Power & Light Company	Maine
Electric Power & Light Corporation	Maine
National Power & Light Company	New Jersey
United Gas Corporation	Delaware
Power Securities Corporation	New Hampshire
Idaho Power Company	Maine
Utah Power & Light Company	Maine
United Gas Public Service Company	Delaware
Houston Gulf Gas Company	Delaware
The Montana Power Company	New Jersey
Nebraska Power Company	Maine
Pacific Power & Light Company	Maine
Lehigh Power Securities Corporation	Delaware

That none of the defendants has made application to the Securities and Exchange Commission (a) under section 2 (a) (7) (b) of the Act for an order declaring that it is not a holding company within the meaning of said Act, or (b) under section 3 (a) or any other section of the Act, for an order exempting it from any provision of the Act, and that the Commission has made no such order. That none of said defendants has registered with the Securities and Exchange Commission pursuant to Section 5 of the Act; and that the defendants have advised and notified the Commission that they will not register pursuant to section 5 of the Act.

V

That each of the defendants, American Power & Light Company, American Gas and Electric Company, Electric Power & Light Cor-

poration, United Gas Corporation, National Power & Light Company, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company,
65 and Lehigh Power Securities Corporation is a holding company as defined by section 2 (a) (7) (A) of the Act, in that it owns, controls, or holds with power to vote ten percentum or more of the outstanding securities of one or more companies which are public utility companies within the meaning of section 2 (a) (3), (4), and (5) and that defendant, Electric Bond and Share Company is a holding company as defined by section 2 (a) (7) (A) of the Act in that it owns, controls, or holds with power to vote ten percentum or more of the outstanding voting securities of the defendants American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company, each of which is a holding company within the meaning of the said Act.

VI

That Electric Bond and Share Company is the top holding company in a holding company system, commonly known and sometimes hereinafter referred to as the Electric Bond and Share System, and which system includes all of the other defendants, as well as many other corporations. That the defendants American Gas & Electric Company, American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company are intermediate holding companies in the Electric Bond and Share System. Each such intermediate holding company, together with its subsidiary holding companies and public utility companies, is likewise a holding company system, commonly known and sometimes hereinafter referred to, respectively, as the American Gas & Electric System, the American Power & Light System, the Electric Power & Light System, and the National Power & Light System.

That the defendants The Montana Power Company, Nebraska Power Company, and Pacific Power & Light Company are subsidiaries of the defendant American Power & Light Company and are included within the American Power & Light System.

That the defendants, United Gas Corporation, United Gas Public Service Company, Houston Gulf Gas Company, Utah Power & Light
Company, Power Securities Corporation, and Idaho Power
66 Company are all subsidiaries of the Electric Power & Light Corporation and included within the Electric Power & Light System.

That the defendant Lehigh Power Securities Company is a subsidiary of National Power & Light Company and included within the National Power & Light System.

That defendant Electric Bond and Share Company, through its stockownership in and control of the defendants, American Power and Light Company, American Gas and Electric Company, Electric Power and Light Corporation and National Power and Light Company, owns and controls electric and gas utility companies which are subsidiaries, as defined by the Act, of the defendants American Gas and Electric Company, American Power and Light Company, Electric Power and Light Company, or National Power and Light Company, and which own and operate electric utility assets and gas utility assets.

That the operating revenues of the Electric Bond and Share system are primarily derived from the sale of natural and manufactured gas and electric energy.

That the electric customers of the Electric Bond and Share system number over 2,300,000 and its revenues are derived from properties located in 32 states of the United States.

That its electric properties are generally divided and grouped in seven large interconnected interstate groups which transmit annually a total of approximately 13,000,000,000 kilowatt hours of electric energy, about 3,000,000,000 of which are transmitted across state lines.

That its gas properties form interconnected interstate systems for the production and transmission of manufactured and natural gas. That the gas utilities of the system operate in fifteen states and one foreign country; that the producing properties of this system embrace approximately 1,428,000 acres of gas fields; that the system owns or controls more than nine thousand miles of pipe lines used in the transmission of gas; that the system serves in excess of 450,000 customers; and that the yearly production of the system amounts to more than two hundred billion cubic feet of natural and manufactured gas, in excess of sixty billion of which are transported across state lines.

That the outstanding stock of the Electric Bond and Share
67 Company is owned by more than 130,000 stockholders located in every state of the United States, in each of its possessions and in many foreign countries.

VII

That the defendants are now doing and will continue to do the following acts forbidden to unregistered holding companies by the provisions of section 4 (a) of the Act, as hereinafter more particularly set forth:

(1) That since December 1, 1935, directly or indirectly, each and all of the defendants have engaged and will continue to engage in selling, transporting, transmitting, or distributing natural or manufactured gas and electric energy and have owned or operated and will continue to own or operate utility assets for the transportation,

transmission, or distribution of, natural or manufactured gas or electric energy, in interstate commerce, as forbidden to unregistered holding companies by section 4 (a) (1) of the Act.

(2) That directly or indirectly defendants Electric Bond and Share Company and American Gas and Electric Company have negotiated and entered into by use of the mails or means or instrumentalities of interstate commerce service, sales, and construction contracts, within the meaning of section 2 (a) (18), (19), and (20), undertaking to perform service, sales, and construction work for, and to sell goods to, public utility companies or holding companies and in the normal course of business since December 1, 1935, have continuously engaged and will continue to engage, either in their own names or through wholly owned subsidiaries, by use of the mails or means or instrumentalities of interstate commerce, in taking steps in the performance of such contracts, or similar contracts, similarly entered into, as forbidden to unregistered holding companies by section 4 (a) (2) of the Act.

(3) That directly or indirectly each of the defendants has distributed or made public offerings for sale or exchange, and will continue as its business needs require to distribute or make public offerings for sale or exchange of its securities or the securities of its subsidiary companies or affiliates, by use of the mails or means or instrumentalities of interstate commerce; and have sold and will continue to sell as its business needs require such securities
68 having reason to believe that such securities, by use of the mails or means or instrumentalities of interstate commerce, will be distributed or made the subject of public offerings, as forbidden to unregistered holding companies by section 4 (a) (3) of the Act.

(4) That directly or indirectly each of the defendants, by use of the mails or means or instrumentalities of interstate commerce, has acquired or negotiated for, and will continue as its business needs require to acquire, or negotiate for the acquisition of securities of its subsidiary companies or affiliates, or of public utility or holding companies, as forbidden to unregistered holding companies by section 4 (a) (4) of the Act.

(5) That since December 1, 1935, the defendants Electric Bond & Share Company and American Gas & Electric Company, in doing the acts described in sub-paragraph (2) of this paragraph, and all of the defendants in doing the acts described in sub-paragraphs (1), (3), and (4) of this paragraph have engaged, and will continue to engage, in business in interstate commerce, as forbidden to unregistered holding companies by Section 4 (a) (5) of the Act.

(6) That directly or indirectly each and all of the defendants own, control, or hold with power to vote securities of subsidiary companies which sell, transport, transmit, or distribute natural or

manufactured gas or electric energy and which own and opefate utility assets for the transportation, transmission, or distribution of natural or manufactured gas or electric energy, in interstate commerce, as forbidden to unregistered holding companies by section 4 (a) (6) of the Act.

(7) That directly or indirectly defendant Electric Bond and Share Company owns, controls, or holds with power to vote all of the outstanding securities of one or more subsidiary companies which, in the ordinary course of their business, by use of the mails or means or instrumentalities of interstate commerce, are engaged in taking steps in the performance of service, sales, or construction contracts, undertaking to perform services or construction work for or sell goods to public utility companies or holding companies, as forbidden to unregistered holding companies by section 4 (a) (6) of the Act.

69 VIII

(1) That defendant Electric Bond and Share Company owns voting securities of the defendants American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation, United Gas Corporation and National Power & Light Company in the following amounts:

A. 846,985 shares of the common stock of defendant American Gas and Electric Company, constituting 17.51 per centum of the voting securities of said company.

B. 51,840 shares of the $5 Preferred Stock and 937,213 shares of the common stock of defendant American Power & Light Company, constituting 20.77 per centum of the voting securities of said company.

C. 485 shares of the $7 Preferred Stock and 1,976,638 shares of the common stock of defendant Electric Power & Light Corporation, constituting 47.20 per centum of the voting securities of said company.

D. 752,666 shares of common stock of defendant United Gas Corporation, constituting 7 per centum of the voting securities of said company. Defendant Electric Power & Light Corporation owns 884,610 shares of the $7 Second Preferred Stock and 3,795,086 shares of the common stock constituting 61.58 per centum of the voting securities of said company.

E. 2,540,438 shares of the common stock of defendant National Power & Light Company, constituting 46.56 per centum of the voting securities of said company.

(2) That defendant Electric Bond and Share Company owns all the capital stock of Ebasco Services Incorporated which, in turn, owns all the capital stock of Phoenix Engineering Corporation, and Two Rector Street Corporation.

IX

(1) That defendant American Gas and Electric Company owns all or substantially all the voting securities of the following public utility companies, which are also holding companies:

A. Atlantic City Electric Company, which in turn owns 50 per centum of the voting securities of Deepwater Operating Company, a public utility company.

70 B. The Ohio Power Company, which in turn owns 50 per centum of the voting securities of Beech Bottom Power Company, Inc., a public utility company.

C. The Scranton Electric Company, which in turn owns 50 per centum of the voting securities of Stanton Operating Company, a public utility company.

D. Appalachian Electric Power Company, which in turn owns all of the voting securities of Kentucky and West Virginia Power Company, Inc., and Kingsport Utilities, Inc., both public utility companies.

(2) That defendant American Gas and Electric Company owns all or substantially all of the voting securities of the following public utility operating companies:

A. Indiana General Service Company.

B. Indiana and Michigan Electric Company.

C. Wheeling Electric Company.

D. Southern Ohio Public Service Company.

X

(1) That defendant American Power & Light Company owns all or substantially all of the voting securities of the following public utility companies which are also holding companies:

A. Defendant Montana Power Company which in turn owns all or substantially all of the voting securities of Idaho Transmission Company, a public utility company.

B. Defendant Nebraska Power Company which in turn owns all or substantially all of the voting securities of Citizen's Power and Light Company, a public utility company.

C. Defendant Pacific Power and Light Company which in turn owns all or substantially all of the voting securities of Inland Power and Light Company, a public utility company.

D. The Washington Water Power Company, which in turn owns all or substantially all of the voting securities of Chelan Electric Company, a public utility company.

(2) That defendant American Power & Light Company owns all or substantially all of the voting securities of the folowing public utility companies:

71 A. Central Arizona Light & Power Co.
B. Florida Power and Light Company.
C. Kansas Gas and Electric Company.
D. Minnesota Power and Light Company.
E. Montana Power Gas Company.
F. New Mexico Electric Service Company.
G. Northern Power Company.
H. Texas Electric Service Company.
I. Texas Power and Light Company.
J. Texas Public Utilities Corporation.

(3) That defendant American Power & Light Company owns 84.03% of the voting securities of Portland Gas and Coke Company, 66.57% of the voting securities of Superior Water, Light and Power Company and 67.63% of the voting securities of Northwestern Electric Company, all public utility companies.

XI

(1) That defendant Electric Power & Light Corporation owns all or substantially all of the voting securities of the defendant Power Securities Corporation, a holding company. Defendant Power Securities Corporation owns all or substantially all of the voting securities of the defendant Idaho Power Company, a public utility company and holding company. Idaho Power Company owns all or substantially all of the voting securities of the Nevada Power Company and Salmon River Power & Light Company, both public utility companies.

(2) That defendant Electric Power & Light Corporation owns all or substantially all of the voting securities of the defendant Utah Power & Light Company, a holding company and public utility company. That Utah Power & Light Company owns all or substantially all of the voting securities of the Utah Light & Traction Company, Western Colorado Power Company, and Bountiful Light & Power Company, all public utility companies.

(3) That defendant Electric Power & Light Corporation owns all or substantially all of the voting securities of the following public utility operating companies:

A. Arkansas Power and Light Company.
B. Louisiana Power and Light Company.
C. Mississippi Power and Light Company.
D. New Orleans Public Service, Incorporated.

72 (4) That defendant Electric Power & Light Corporation owns 69.98% of the voting securities of Dallas Power and Light Company, a public utility company, and 61.58% of the voting securities of defendant United Gas Corporation, a public utility company and holding company, as hereinafter alleged.

XII

(1) That defendant United Gas Corporation owns all or substantially all of the voting securities of defendant United Gas Public Service Company, its principal subsidiary operating company, which in turn owns all or substantially all of the voting securities of United Production Company, Southern Gas and Fuel Company, Compania Mexicana de Gas, S. A., Southern Gas Utilities, Inc., Northern Texas Utilities Company, all public utility companies, and defendant Houston Gulf Gas Company, a public utility company and holding company.

(2) That defendant Houston Gulf Gas Company in turn owns all or substantially all of the voting securities of Houston Gas and Fuel Company, a public utility company.

(3) That defendant United Gas Corporation, in addition to the above named companies, owns substantial amounts of the voting securities of the following public utility companies in approximate percentages as follows:

A. Mississippi River Fuel Corporation—47%.
B. El Paso Natural Gas Company—27%.
C. Natural Gas Company, Inc.—50%.

XIII

(1) That defendant National Power & Light Company owns all or substantially all of the voting securities of defendant Lehigh Power Securities Corporation, a holding company, which in turn owns voting securities of the following public utility companies which are also holding companies:

A. All or substantially all of the voting securities of Lehigh Valley Transit Company, which owns all or substantially all of the voting securities of Easton Consolidated Electric Company. Easton Consolidated Electric Company in turn owns all or substantially all of the voting securities of Edison Illuminating Company of Easton, a public utility company.

73 B. 75.63% of the voting securities of Pennsylvania Power and Light Company, which owns all or substantially all of the outstanding voting securities of the following public utility companies:

1. The Carlisle Gas and Water Company.
2. Columbia Gas Company.
3. Lehighton Electric Light and Power Company.
4. Pine Grove Electric Light, Heat and Power Company.
5. Shenandoah Light, Heat and Power Company.
6. Susquehanna Gas Company.

(2) That defendant National Power and Light Company owns all or substantially all of the voting securities of the following public utility companies:

A. Birmingham Electric Light Company.
B. Carolina Power and Light Company.
C. Holston River Electric Company.
D. Houston Lighting and Power Company.
E. Memphis Power and Light Company.
F. Roanoke River Power Company.
G. Tennessee Public Service Company.
H. West Tennessee Power and Light Company.

(3) That defendant National Power and Light Company, in addition to the companies named above, also owns approximately 17 per cent of the outstanding voting securities of the Memphis Natural Gas Company, a pipeline company which transmits gas from Louisiana through Arkansas and Mississippi into Tennessee.

XIV

That the following holding companies, which are members of the Electric Bond and Share System and are more specifically described in paragraphs IX, X and XIII hereof, have not been included in paragraph two hereof as defendants:

American Gas and Electric System:

Appalachian Electric Power Company
The Ohio Power Company
The Scranton Electric Company
Atlantic City Electric Company

74 American Power and Light System:

Washington Water Power Company

National Power and Light System:

Pennsylvania Power and Light Company
Lehigh Valley Transit Company
Easton Consolidated Electric Company

That said companies have been omitted from the list of defendants in paragraph two hereof, by reason of the following: On November 29, 1935, the plaintiff, Securities and Exchange Commission, acting pursuant to the authority conferred upon it by Section 3 (a) of the Act, adopted a rule known as rule 3 A–2, a copy of which rule is attached hereto, marked "Exhibit A" and made a part hereof. Said rule, subject to the time limitations therein specified, exempts the holding companies of the classes therein described from any obligation, duty or liability imposed by the Act. From the information now available to the plaintiff it appears to said plaintiff that said Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Washington Water Power Company, Pennsylvania Power and Light Company, Lehigh Valley Transit Company *Company* and Easton Consolidated Electric Company are companies which are included within one or more of the classes of

companies specified in said rule and are, therefore, now exempt, under the terms of said rule, from any obligation, duty or liability imposed by the Act, and specifically are by said rule exempt from the requirement of registration under Section 5 of the Act.

XV.

(1) That each of the operating electric utility companies included within the Electric Bond & Share System is engaged in the business of generating or receiving electric energy and delivering and distributing such electric energy for sale. That a large amount of the electric energy generated and received by the electric utility companies in the system is transmitted in interstate commerce from the state in which it is generated to the states in which it is distributed and consumed. That many of the electric utility companies in the Electric Band & Share System own, or lease and operate, utility assets for the transmission of, or take part in the transmission of, large amounts of electric energy in interstate commerce. That many of the electric utility companies in the system own, or lease and operate, electric power lines which cross state lines, and that such companies transmit in interstate commerce energy generated in one state to other states in which such energy is delivered, distributed, and consumed. That many of the electric utility companies in the system own or lease and operate power lines over which such companies transmit electric energy generated in one state to the borders of such state, and that at such borders, these power lines are connected with the power lines of electric utility companies operating in contiguous states, where such electric energy is delivered, distributed, and consumed. That many of the electric utility companies in the Electric Bond & Share System receive electric energy in one state which has been generated in and transmitted from another state, and distribute and deliver such electric energy for consumption in the state in which it is received.

That electric energy which is transmitted in interstate commerce and across state lines is herein for convenience referred to as "interstate electric energy" and that the generation, receipt, transmission, delivery, or distribution of electric energy is herein for convenience referred to as "handling." That, during the year 1933, (a) the total quantity of all electric energy handled by each operating electric utility company in the Electric Bond & Share System, (b) the quantity of interstate electric energy handled by each such company, and (c) the ratio of the interstate electric energy handled by each such company to the aggregate amount of electric energy handled by such company was as follows:

Company	Total quantity of electric energy handled (1,000 kilowatt hours)	Interstate electric energy handled (1,000 kilowatt hours)	Ratio interstate handled to total handled
American Gas & Electric System:			
Atlantic City Electric Co.	193, 920		
(Includes energy supplied by Deep Water Operating Company)	1, 345, 491	962, 370	72. 8
Appalachian Electric Power Co.			
(Includes Kentucky-West Virginia Power Co. and Kingsport Utilities, Inc.)	130, 085		
Indiana General Service Co.	457, 209	304, 000	74. 7
76 Indiana & Michigan Electric Co.	1, 808, 945	808, 244	49. 2
Ohio Power Co.			
(Includes energy supplied by Beech Bottom Power Co., Southern Ohio Public Service Co., and Ohio State Power Co.).	240, 555		
Scranton Electric Co.			
(Includes energy supplied by Scranton Operating Company)	92, 040	9, 270	10. 1
Wheeling Electric Co.			
American Power & Light System:	76, 137		
Central Arizona Light & Power Co.	187, 484		
Florida Power & Light Co.	223, 142	7, 411	3. 3
Kansas Gas & Electric Co.	306, 679	30, 747	10. 0
Minnesota Power & Light Co.	808, 412	17, 886	2. 0
Montana Power Co.			
(Includes Idaho Transmission Co.)	314, 936	24, 456	7. 8
Nebraska Power Co.			
(Includes Citizens Power & Light Co.)	2, 130		
New Mexico Electric Service Co.	18, 396	18, 396	100. 0
Northern Power Co.	266, 944	123, 543	46. 3
Northwestern Electric Co.	327, 685	50, 725	15. 5
Pacific Power & Light Co.			
(Includes Inland Power & Light Co.)	12, 685	12, 351	97. 4
Superior Water, Light & Power Co.	306, 417		
Texas Electric Service Co.	493, 276		
Texas Power & Light Co.	1, 740		
Texas Public Utilities Corp.	652, 882	208, 993	9 32. 1
Washington Water Power Co.			
Electric Power & Light System:	295, 801	184, 497	62. 2
Arkansas Power & Light Co.	210, 136		
Dallas Power & Light Co.	533, 646	308, 822	58. 4
Louisiana Power & Light Co.	152, 668	126, 559	93. 4
Mississippi Power & Light Co.	296, 420		
New Orleans Public Service, Inc.	496, 101	242, 159	49. 8
Utah Power & Light Co.			
(Includes Utah Light & Traction Company)	20, 212		
Western Colorado Power Co.	402, 6-2	16, 390	4. 1
Idaho Power Co.	526		
Salmon River Power & Light Co.	441	441	100. 0
Nevada Power Co.	812		
Bountiful Light & Power Co.			
National Power & Light System:	196, 012		
Birmingham Electric Co.	909, 965	572, 770	59. 1
Carolina Power & Light Co.	1, 223		
Ifolston River Co.	442, 878		
Houston Lighting & Power Co.	1, 573, 890	45, 453	2. 8
Pennsylvania Power & Light Co.			
(Includes Lehighton Electric Light and Power Co., Carlisle Gas and Water Co., and Pinegrove Electric Light, Heat and Power Co., and energy supplied by Scranton Operating Co. and Canestoga Transmission Co.)	169, 511	782	.4
Memphis Power & Light Co.	90, 208	89, 821	99. 5
Tennessee Public Service Co.	16, 000		
West Tennessee Power & Light Co.			

77 That, at the present time, the ratio of the interstate electric energy handled by each of the foregoing electric utility companies to the aggregate amount of electric energy handled by it is substantially the same as, or in excess of, such ratio during the year 1933, as hereinabove alleged.

(2) That each of the gas utility companies included within the Electric Bond and Share System is engaged in the business of manufacturing or extracting gas and delivering and distributing such gas for sale. That a large amount of the natural and manufactured gas extracted or manufactured by the gas utility companies in the system is transmitted in interstate commerce from the State in which it is extracted or manufactured to the States in which it is distributed and consumed. That many of the gas utility companies in the system own or lease and operate utility assets for the transmission of, or take part in the transmission of large amounts of natural and manufactured gas in interstate commerce. That the following companies in the Electric Bond and Share System transmit or take part in the transmission of natural and manufactured gas in interstate commerce:

A. Electric Power & Light System.—That defendant United Gas Corporation, a member of the Electric Power & Light System, through its subsidiary, the defendant United Gas Public Service Company, more specifically described in paragraph XII hereof, owns and operates an interconnected interstate system of pipe-lines which are used in the transmission of a substantial amount of natural and manufactured gas in interstate commerce through the States of Florida, Alabama, Mississippi, Louisiana, and Texas. That, in addition, the following subsidiaries of United Gas Corporation, more specifically described in paragraph XII hereof, own and operate utility assets for the transmission of and transmit or take part in the transmission of substantial amounts of manufactured or natural gas in interstate commerce:

(1) Mississippi River Fuel Corporation, which owns and operates an interstate pipe-line carrying large quantities of natural gas in interstate commerce from fields in Louisiana to Missouri.

(2) El Paso Natural Gas Company, which owns and operates an interstate interconnected system of pipe-lines used in the trans-
78 mission of a substantial amount of natural and manufactured gas in interstate commerce from New Mexico into Texas, Arizona, and the Republic of Mexico.

(3) Consolidated Gas Utilities Company, which owns and operates an interconnected system of pipe-lines used in the transmission of a substantial amount of natural and manufactured gas in interstate commerce from Texas into Oklahoma and Kansas.

B. American Power & Light System.—That the following subsidiary gas utility companies of the American Power & Light Company, which are more specifically described in paragraph X hereof, own and operate utility assets for the transmission of natural or

manufactured gas in interstate commerce, and transmit or take part in the transmission of substantial amounts of natural or manufactured gas in interstate commerce:

(1) Portland Gas and Coke Company, which transmits substantial amounts of gas, natural or manufactured, in interstate commerce from Oregon to Washington.

(2) Superior Water, Light and Power Company, which transmits substantial amounts of gas, natural or manufactured, from Minnesota to Wisconsin.

(3) Central Arizona Light and Power Company, which receives and distributes in Arizona substantial amounts of natural gas produced in New Mexico.

XVI

(1) That defendant Electric Bond and Share Company organized the defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, and American Gas and Electric Company for the purpose and with the intention of employing said corporations as its corporate instrumentalities for the acquisition, financing, and control of public utility companies; that, at the time of the organization of the aforesaid defendant corporations, defendant Electric Bond and Share Company acquired by subscription and purchase or in exchange for property, voting securities of said corporations in an amount sufficient to enable it to dominate and control the affairs of said corporations, and has ever since retained voting securities in an amount sufficient to insure such domination and control. That de-

79 fendant Electric Bond and Share Company has in fact at all times completely dominated and controlled all the corporate activities of said defendants. That defendant Electric Bond and Share Company caused its own directors and executive officers to be elected directors and officers of each of said defendants, with the exception of American Gas and Electric Company, at the time of its organization, and that this substantial identity of directors and executive officers continued until after the passage of the Public Utility Holding Company Act of 1935; that, shortly after the passage of the Act, defendant Electric Bond and Share Company caused the then officers and directors of said defendants, with the exception of American Gas and Electric Company, to resign and elected other executive officers of the Electric Bond and Share Company System in their stead, so as to terminate the substantial identity of directors and executive officers previously existing, but so as to continue in control of said defendants a management completely subject to the domination and control of the defendant Electric Bond and Share Company. That the officers and directors of all of said defendant companies, including American Gas and Electric Company, have at all times been and now are persons designated by Electric Bond and Share Company, and who, by virtue of their relations with

Electric Bond and Share Company, are subject to its direction and control.

(2) That some time subsequent to the organization of the defendants American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company, defendant Electric Bond and Share Company prepared and adopted a standard form of service contract, hereinafter more particularly described, and through the exercise of its control over said defendants, caused them to enter into such contracts with it. Pursuant to said contracts, defendant Electric Bond and Share Company undertook to perform and did perform for said defendants substantially all the activities necessary to the conduct of their corporate business and functions. That some time subsequent to the passage of the Act, defendant Electric Bond and Share Company caused to be organized Ebasco Services Incorporated, all of the outstanding capital stock of which is owned and held by Electric Bond and Share Company.

That Electric Bond and Share Company thereupon assigned
80 to Ebasco Services Incorporated all of its right, title and interest in the service contracts hereinabove referred to. That subsequent to the date of such assignments, Electric Bond and Share Company, acting through Ebasco Services Incorporated, has continued to perform all of the services which it undertook to perform in said service contracts.

(3) That the defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, and American Gas and Electric Company own all or substantially all of the voting securities of public utility operating companies and of holding companies which in turn own all or substantially all of the outstanding voting securities of public utility operating companies, all as more specifically alleged in paragraphs IX, X, XI, XII, and XIII hereof. That the securities so owned by said defendants were either transferred to them by Electric Bond and Share Company or were purchased by them at the instance of the Electric Bond and Share Company. That said defendants perform no functions with respect to the public utility and holding companies thus owned, except to serve as mediums through which defendant Electric Bond and Share Company may publicly finance the operations of the subsidiary public utility companies of the Electric Bond and Share System, and through which defendant Electric Bond and Share Company, with a comparatively small investment of its own, may dominate and control the operations of these subsidiary public utility companies. That since their organization by it, defendant Electric Bond and Share Company has effectively used said defendants as instrumentalities for completely dominating and controlling the operations of the public utility companies of the system. That as a consequence of this domination and control, all important questions of business policy and personnel arising in the operations of the public utility companies of the Electric Bond and Share System are determined by defendant Electric Bond and Share Company,

and all of these subsidiary public utility companies are controlled and operated as component members of a single system.

(4) That defendant Electric Bond and Share Company has also for many years controlled and directed, and now continues to
81 control and direct the operations of the subsidiary public utility companies of the system, other than subsidiaries of American Gas and Electric Company, by means of supervisory services rendered to these subsidiary public utility companies; that defendant Electric Bond and Share Company has adopted a standard form of service contract for public utility companies, hereinafter more particularly set forth, covering all important aspects of the operations of its subsidiary public utility companies; that it has caused all or substantially all of its subsidiary public utility companies in the United States, other than subsidiaries of American Gas and Electric Company, to negotiate and enter into such service contracts, in accordance with which defendant Electric Bond and Share Company has maintained an elaborate service organization through which it has in fact regularly and continuously performed all the services set forth in the standard service contract, and other services as well, for these public utility companies. That subsequent to the passage of the Public Utility Holding Company Act of 1935 and the organization of Ebasco Services Incorporated, as hereinabove alleged, Electric Bond and Share Company assigned to Ebasco Services Incorporated its service contracts with said subsidiary public utility companies. That either in its own name or through Ebasco Services, Incorporated, defendant Electric Bond and Share Company now continues and will continue, to perform all the services set forth in the standard form of service contract and many other services for all or substantially all of its subsidiary public utility companies in the United States, other than subsidiaries of American Gas and Electric Company, and continues and will continue thus to supervise, direct, and control in all important aspects, the operations of these subsidiary public utility companies.

(5) That defendant Electric Bond and Share Company, by means of its voting control, its supervisory services, and other means, as hereinabove set forth, has controlled, supervised, and directed the business and affairs of its subsidiary public utility companies which are engaged in the interstate transmission of electric energy, and natural and manufactured gas, as hereinabove alleged; that defendant Electric Bond and Share Company has caused its sub-
82 sidiary holding companies to purchase controlling interests in public utility companies in part for the purpose of facilitating and developing the interstate transmission of natural and manufactured gas and electric energy; that defendant Electric Bond and Share Company has constructed or caused its subsidiary utility companies to construct utility properties for the interstate transmission of gas and electric energy, has caused the purchase and construction of utility properties for the generation of electric energy

and the development of natural and manufactured gas to be transmitted in interstate commerce, and has caused and facilitated the development of interconnections between utility properties for the interstate transmission of gas and electric energy; and that by reason of these activities, defendant Electric Bond and Share Company, both in its own corporate capacity and through the corporate organizations of the other holding companies named defendants herein, is engaged and will continue to be engaged in the transmission in interstate commerce of electric energy and manufactured and natural gas.

(6) That defendant American Gas and Electric Company actively dominates and controls its subsidiary public utility companies through its ownership of substantially all of their voting securities and through other means hereinafter set forth; that defendant American Gas and Electric Company maintains a service organization through which it renders to all or substantially all of its subsidiary public utility companies, supervisory services covering all important aspects of their business operations; that defendant American Gas and Electric Company in rendering these services supervises, directs, and controls the business, affairs, and operations of its subsidiary public utility companies which are engaged in the transmission of electric energy in interstate commerce, as hereinabove alleged; that by virtue of these activities, defendant American Gas and Electric Company is itself actively engaged and will continue to be actively engaged in the interstate transmission of electric energy.

(7) That defendants, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company, and Lehigh Power Securities Corporation, are engaged
83 in the interstate transmission of electric energy or natural or manufactured gas, either themselves or through the instrumentality of public utility companies, all or substantially all of whose voting securities are owned by said defendants.

XVII

That the defendant Electric Bond and Share Company, in the ordinary course of its business, by constant use of the mails or means or instrumentalities of interstate commerce is or will be continuously engaged, either in its own name or through the instrumentality of Ebasco Services, Incorporated, in the performance of the existing service contracts with American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company. That in said contracts, defendant Electric Bond and Share Company, in its own name or through Ebasco Services, Incorporated, for an agreed rate of compensation, based on the gross earnings of the supervised holding company and its subsidiaries, undertakes to

furnish and the supervised holding company agrees to accept and pay for full and complete services of a management, financial, auditing, engineering, and secretarial nature. That more specifically such contracts provide:

(1) As to Executive Officers.—That the Electric Bond and Share Company will lend the assistance of its executive officers to aid in the development of general policies and the solution of major problems arising in connection with the affairs and management of the supervised holding company.

(2) As to Officers and Directors.—That the Electric Bond and Share Company will make available its executives and other members of its organization for service as directors and officers of the supervised holding company.

(3) As to Office Accommodation and Staff.—That the Electric Bond and Share Company will provide office accommodation and staff personnel in New York for the transaction of business for the supervised holding company.

(4) As to Sponsors.—That the members of the staff of Electric Bond and Share Company will serve as sponsors, sponsor engineers, and sponsor accountants for the operating subsidiaries of the supervised holding company, and will be available for consultation,
84 advice and assistance in the interest of the systematic development and operation of the supervised holding company's system as a whole.

(5) As to Capital and Corporate Matters.—That the Electric Bond and Share Company will assist in the drafting, printing, creation, issuance, listing, delivery, registration, transferring, and retirement of the securities of the supervised holding company, and assist in other important corporate actions.

(6) As to Secretarial Service.—That the Electric Bond and Share Company will direct, to the extent desired or required, the calling of stockholders, directors, and committee meetings of the supervised holding company, will compile information and programs of action for such meetings, cooperate in the drafting of resolutions, and that the members of the Electric Bond and Share Company who are officers of the supervised holding company will maintain records of and make notifications of actions taken at such meetings.

(7) As to Tax Services.—That the Electric Bond and Share Company will advise as to accounting for Federal taxation; will handle the preparation and filing of tax returns and supporting schedules, will assist in presenting claims for refunds, abatements, and adjustments of taxes, will assist in cooperation with paying agents in accounting and reporting interest payments; will keep informed as to tax law, and will assist in the preparation and filing of state and local tax returns.

(8) As to Financial Service.—That the Electric Bond and Share Company will advise upon permanent financing, will aid in obtaining temporary financing, and will arrange for the employment of temporary surplus cash.

(9) As to Funds and Securities.—That the officers of Electric Bond and Share Company who are also officers of the supervised holding company will attend to the receipt and disbursement of funds, in connection with which Electric Bond and Share Company will procure lists of stockholders, do all the clerical work incident to the preparation and mailing of dividend checks, and arrange for the filing of government reports. and that Electric Bond and Share Company will provide safety deposit facilities for such securities as are kept in New York and will transmit and deliver them as directed.

85 (10) As to Accounting and Analysis.—That the Electric Bond and Share Company will do all bookkeeping, accounting, and auditing work for the supervised holding company, except annual or special audits which are made by outside auditors; and that Electric Bond and Share Company will do all work incident to vouchering for payment of and pay invoices, reconcile bank accounts, furnish the supervised holding company with monthly statements thereof, and prepare analyses of accounts for the officers of the supervised holding company.

(11) As to Statistics and Reports.—That Electric Bond and Share Company will draft and submit to the supervised holding company reports to be sent to stockholders, interested bankers, and financial publications; and will submit to the supervised holding company reports of interest concerning other public utility companies.

(12) As to Security Listings.—That Electric Bond and Share Company will prepare appropriate applications for the listing of securities on stock exchanges and will prepare periodical financial statements in connection therewith, and will assist in any hearings required by stock exchange officers.

(13) As to Subsidiary Holding Companies.—That Electric Bond and Share Company when requested by the supervised holding company will perform the same supervision and general services as hereinabove set forth for any of the subsidiary holding companies of the supervised holding company.

(14) As to Security Sales.—That Electric Bond and Share Company, for an additional compensation based upon the amount of securities sold, will, except when otherwise directed, take charge of the sale at wholesale of securities for the supervised holding company and its holding company subsidiaries; supervise the preparation of mortgages, indentures, and trust agreements; prepare and distribute statements for the information of interested public authorities, bankers, and investors; be prepared to answer legitimate questions from investing interests; and will endeavor to maintain a favorable consideration by the investing public of the securities of the supervised holding company and its subsidiary holding companies.

(15) That Electric Bond and Share for an additional com-
86 pensation based upon the amount of securities sold will direct sales of such stock of the supervised holding companies and of its subsidiary holding companies as they wish to sell to the consumers in the territory served by operating subsidiaries.

(16) That Electric Bond and Share Company will aid in the preparation of special reports required by state public utilities commissions and "blue sky" laws and for the qualification of securities as legal investments for savings banks, trustees, and other regulated financial institutions.

(17) As to Acquisition and Exchange of Properties.—That Electric Bond and Share Company for an additional compensation will provide expert engineers, statisticians, auditors, accountants, and rate and corporate specialists to aid in the acquisition of new properties and companies, and aid in the sale or exchange of properties.

(18) That for a compensation to be agreed upon, Electric Bond and Share Company to the best of its ability will carry out any request for services not contemplated by the contract.

XVIII

That the defendant Electric Bond and Share Company, in the ordinary course of its business, by constant use of the mails or means or instrumentalities of interstated commerce, in its own name or through Ebasco Services, Incorporated, is and will be continuously engaged in taking steps in the performance of its existing service contracts with the utility companies in the Electric Bond and Share System. That in such contracts, defendant Electric Bond and Share Company, in its own name or through Ebasco Services, Incorporated, for an agreed rate of compensation based upon total monthly operating revenues, undertakes to render extensive services, and the operating public utility agrees to accept such services and to pay for the same. That more specifically such contracts provide:

1. As to Executive Officers.—That Electric Bond and Share Company will lend the assistance of its executive officers to aid in the development of general policies and the solution of major problems arising in connection with the operation and management of the supervised operating company.

87 2. As to Supplying of Officers and Directors.—That Electric Bond and Share Company will make available its executives and other members of its organization for service as directors and officers of the supervised operating company.

3. As to Sponsors.—That Electric Bond and Share Company will provide one or more of its operating specialists to serve as sponsor for the supervised operating company, which sponsor will visit the properties as frequently as may be necessary for a comprehensive knowledge of the situation and local problems of the operating

company; that one of the senior engineers of Electric Bond and Share Company will serve as sponsor engineer for the supervised operating company in which capacity he will visit its properties from time to time; that one of the senior accountants of Electric Bond and Share Company will serve as sponsor accountant for the operating company in which capacity he will maintain contact therewith through correspondence or by visits.

4. As to Capitol and Corporate Matters.—That Electric Bond and Share Company will assist in the drafting, printing, creation, issuance, listing, delivery, registration, transferring, and retirement of the securities of the supervised operating company; that Electric Bond and Share Company will advise with the officers and counsel of the supervised operating company in administration of legal work.

5. As to Secretarial Service—Corporate Meetings.—That Electric Bond and Share Company will direct, to the extent desired, the calling, notification and recording of stockholders, directors and committee meetings of the supervised operating company; that the Electric Bond and Share Company will assist in the compilation of information, preparation of programs of action, and drafting of appropriate resolutions for such meetings; that upon request, a sponsor or other representative of Electric Bond and Share Company will attend such meetings to give information and advice on the business and affairs of the supervised operating company.

6. As to Tax Services.—That the defendant Electric Bond and Share Company will advise as to accounting for Federal taxation; will handle the preparation and filing of tax returns and supporting schedules; will assist in presenting claims for refunds, abatements and adjustments of taxes, will assist in cooperation with
88 paying agents of the supervised company in accounting and reporting interest payments; will keep informed as to tax law, and will assist in the preparation and filing of state and local tax returns.

7. As to Construction Programs, Budgets, Forecasts.—That the Electric Bond and Share Company will advise and assist in formulating a development, construction program, coordinating of current extensions with such program, and preparing annual construction budgets; that in connection with such budgets the Electric Bond and Share Company will estimate costs, and make recommendations as to necessity and time for contemplated construction; that Electric Bond and Share Company will assist and advise in the preparation of operating budgets and forecasts, covering revenues and expenditures.

8. As to Financial Services.—That Electric Bond and Share Company will advise upon permanent financing, will aid in obtaining temporary financing, and will arrange for the employment of temporary surplus cash.

9. As to Receipt, Disbursement, and Care of Funds.—That the officers of Electric Bond and Share Company who are also officers

of the supervised operating company will attend to the receipt and disbursement of such funds of the supervised operating company as are receivable at or disbursed from New York, and in connection therewith Electric Bond and Share Company will procure lists of stockholders, do all the clerical work incident to the preparation and mailing of dividend checks, and arrange for the filing of government reports; and that Electric Bond and Share Company will provide safety deposit facilities for such securities as are kept in New York and will transmit and deliver them as directed.

10. As to Accounting and Analyses.—That Electric Bond and Share Company will do all work incident to vouchering for payment, and will pay such invoices as the supervised operating company desires paid from New York, reconcile New York bank accounts, furnish monthly statements thereof, and prepare analyses of accounts for the officers of the supervised operating company; that the accounting specialists of Electric Bond and Share Company will be available in New York for consultation on all accounting matters,
including merchandising and jobbing accounting, utilization of
89 mechanical accounting, office devices, and uniform classification of materials and supplies and control thereof.

11. As to Statistics and Reports.—That Electric Bond and Share Company will advise and assist in the preparation of reports to be sent to stockholders, interested bankers, and financial publications, and will furnish upon request reports of interest concerning other public utility companies.

12. As to Stock Exchange Listings.—That Electric Bond and Share Company will assist in the preparation of and arrange for the presentation of applications for the listing of securities, will assist in the preparation of periodical financial statements in connection therewith, and will, when requested, attend and assist in any hearings required by stock exchange officers.

13. As to Public Relations.—That Electric Bond and Share Company will advise and collaborate with the officers of the supervised operating company on questions of business policy, and customer, employee, and public relations; that Electric Bond and Share Company will furnish digests of state and federal regulations and laws, and economic trade, and technical literature, pertaining to the the problems of the supervised operating company.

14. As to Personnel.—That, when agreeable to all parties interested, Electric Bond and Share Company will make recommendations for the transfer of personally observed, qualified men, from one operating company to another, and that Electric Bond and Share Company will assist in obtaining needed personnel.

15. As to Territorial Development.—That Electric Bond and Share Company will advise and assist in the industrial development of the territory served by the supervised operating company, the extension of services into new territory, and acquisitions of new properties.

16. As to New Business, Merchandising, and Jobbing.—That Electric Bond and Share Company will assist in the development of new business, merchandising, and jobbing departments, will plan and assist in installing of modern equipment and system of report forms for solicitation of new business, will supply data on the requirements of any class of business and on the cost of competitive services, will keep in touch with, and inform the supervised company of manufacturing developments in appliances, and will
90 assist in campaigns for special merchandising activities on particular classes of appliances.

17. As to Rates.—That rate specialists of Electric Bond and Share Company will be available in New York and will visit the property of the supervised operating company from time to time for consultation on rate problems, that Electric Bond and Share Company will inform the supervised operating company of public utility rates in force throughout the country, of developments in the theory and practice of rate-making, and of rate rulings and decisions, and that Electric Bond and Share Company will counsel and advise in the preparation and presentation of information, studies, and exhibits required for regulating authorities.

18. As to Consulting Engineering.—That the engineering staff of Electric Bond and Share Company comprises engineering specialists of diversified and extensive experience in technical public utility problems, together with a comprehensive auxiliary organization; that Electric Bond and Share Company keeps informed of public utility engineering developments, making investigations, and conducting research in connection therewith; that Electric Bond and Share Company maintains contact with United States and foreign public utility operations, the activities of technical societies, and with manufacturers of apparatus and equipment; that this organization will be available in New York for consultation on operation, extensions, and development plans; that Electric Bond and Share Company will advise on the cost estimates, designs, and plans of the supervised operating company, will assist in the application to the properties of the holding company of standard designs, types of construction, and methods of operation developed by Electric Bond and Share Company, and will supervise the installation and maintenance of technical and cost records pertaining to properties and operation.

19. As to Purchasing.—That Electric Bond and Share Company will negotiate volume contracts with manufacturers providing for quantity discounts on purchases of public utility supplies, and equipment, including lamps, motors, transformers, meters, electric and gas appliances, lubricating and insulating oils, electric railway supplies, automobiles, trucks, and office equipment; that Electric
91 Bond and Share Company, upon request, will so far as possible, include the supply requirements of the operating company in orders under those volume contracts; that Electric Bond and Share

Company will assist in arranging specific purchases, and in general serve as New York purchasing agent; that Electric Bond and Share Company maintains an information service, and will make available information on current market data, and other information and data likely to be of assistance.

20. As to Apparatus Exchange.—That for the benefit of all companies similarly served, the Electric Bond and Share Company conducts an apparatus exchange.

21. As to Traffic.—That Electric Bond and Share Company, when requested, will route and classify shipments, furnish information on routing, classification, insurance in transit, and procedure in filing claims and checking and auditing of transportation invoices, and will assist in locating and expediting strayed and delayed shipments insofar as this can be done in New York.

22. As to Factory Information.—That Electric Bond and Share Company, when requested, will advise on the status of factory production, and when necessary, on changes in orders for the improvement of deliveries or other advantages.

23. As to Insurance.—That Electric Bond and Share Company will assist in making investigations, reports, and proper classifications and reclassifications of insurable property and in preparation of policy forms; that, when requested, Electric Bond and Share Company will negotiate or assist in negotiating insurance for all risks so as to give the supervised operating company the benefit of advantageous terms obtainable because of the aggregate volume of insurance handled by Electric Bond and Share Company.

24. As to Sale and Marketing of Securities.—That Electric Bond and Share Company, for an additional compensation based upon the amount of securities sold, will, except when otherwise directed, take charge of the sale at wholesale of the securities of the supervised operating company and its controlled companies; will supervise the preparation of mortgages indentures, and trust agreements and prepare and distribute statements for the information of interested public authorities, bankers and investors; will be prepared to answer legitimate questions from investment interests; and will endeavor to maintain a favorable consideration by the investing public of the securities of the supervised operating company and its controlled companies.

92

25. That Electric Bond and Share Company for an additional compensation, will direct sales of such stock of the supervised operating company and its controlled companies as they wish to sell to the consumers in the territory served by the companies.

26. That Electric Bond and Share Company will aid in the preparation of special reports required by state public utility commissions and "blue sky" laws and for the qualification of securities as legal investments for saving banks, trustees, and other regulated financial institutions.

27. As to Engineering Services.—That Electric Bond and Share Company for an additional agreed rate of compensation will, when requested, render special engineering services such as the following: investigations and studies for plans of development; efficiency studies; detailed engineering assistance in interconnecting properties of the supervised company with properties of other companies, purchasing power and gas, and in selling services to other public utility companies and large consumers; appraisals of property; and inspection and tests of purchases.

28. As to Engineering for Construction.—That Electric Bond and Share Company for an additional agreed rate of compensation will upon request do all engineering required in connection with construction or reconstruction work done by one of the associated construction companies of Electric Bond and Share Company or by a general contractor under the supervision of such associated construction company.

29. As to Construction.—That Electric Bond and Share Company, when requested, will arrange for a construction contract between the supervised operating company and one of the associated construction companies of Electric Bond and Share Company under which the construction company for an agreed rate of compensation based on percentages of cost will take charge of construction or reconstruction work.

30. As to Construction Supervision.—That Electric Bond and Share Company when requested will arrange for a construction supervision contract between the supervised operating company and one of the associated construction companies of Electric Bond
93 and Share Company under which the construction company for an agreed rate of compensation based on percentages of construction cost will supervise construction work to be done by a general contractor.

31. As to Special Investigations and Reports.—That Electric Bond and Share Company for an additional, agreed rate of compensation will upon request provide the services of various experts for reports upon new properties, investigations for the industrial development of the territory served, detailed rate studies, detailed new business investigations, and special investigations of important projects and unusual problems, and that Electric Bond and Share Company will supplement such reports with analyses, comments and recommendations.

XIX

That Electric Bond and Share Company by virtue of its domination and control over the subsidiary operating companies in the Electric Bond and Share System, and pursuant to the service contracts described in paragraph XVIII hereof, in fact controls and directs the purchasing of, and through the instrumentality of Ebasco Services, Incorporated, purchases, all or substantially all of the

materials, supplies, and equipment required by said subsidiary operating companies with the exception of the subsidiary operating companies of the American Gas and Electric Company; that defendant Electric Bond and Share Company, or Ebasco Services, Incorporated, is a party to written or oral contracts, agreements or understandings with one or more independent manufacturing companies under which Electric Bond and Share Company or Ebasco Services, Incorporated, undertakes to place with such companies orders for all or substantially all of the materials, supplies, and equipment that may be required by the subsidiary operating companies which are parties to the service contract described in paragraph XVIII hereof; that in the continual performance of such agreements or understandings, Electric Bond and Share Company, in its own name or through the instrumentality of Ebasco Services, Incorporated, purchases annually for the account of such subsidiary operating companies materials, supplies, and equipment valued
94 at more than $50,000,000.00 and causes and will cause substantially all of such materials, supplies, and equipment to be shipped in interstate commerce from the factory or warehouse of the seller to the purchasing subsidiary operating company:

XX

That Electric Bond and Share Company; since the passage of the Holding Company Act, caused to be transferred all or substantially all the capital stock of its wholly owned subsidiary, Phoenix Engineering Corporation, to Ebasco Services, Incorporated; that defendant Electric Bond and Share Company, through the Phoenix Engineering Corporation, in accord with the arrangement contemplated by the standard form contract for operating public utility companies as hereinabove set forth, in the ordinary course of its business, by use of the mails or means or instrumentalities of interstate commerce, regularly negotiates and enters into construction contracts with operating public utility companies of the Electric Bond and Share Group; and that in such construction contracts, Phoenix Engineering Corporation, for an agreed rate of compensation based upon percentages of cost, undertakes to complete specified construction and reconstruction work, and in connection therewith undertakes to purchase, for the account of the operating company, all necessary materials and equipment, to procure necessary insurance, to keep account of costs and render monthly statements thereof, and upon request to make tests of completed work, and for a trial period conduct operation thereof; that in the performance of these contracts Phoenix Engineering Corporation purchases large quantities of materials and equipment for the account of the operating company, and causes the shipment of said large quantities of materials and equipment across state lines from the place of business of seller to that of the operating company; that the defendant

Electric Bond and Share Company, through the Phoenix Engineering Corporation, in the ordinary course of its business, by constant use of the mails and the means and instrumentalities of interstate commerce, is continually engaged and will be continuously engaged in taking steps in the performance of such construction contracts.

95

XXI

1. That defendant Electric Bond and Share Company, in the ordinary course of its business by frequent use of the mails and the means and instrumentalities of interstate commerce, has engaged in the performance of financial services for defendant American Gas and Electric Company, and for the holding companies and utility companies in the American Gas and Electric System, including the sale at wholesale and retail of securities of such companies, which securities were caused by Electric Bond and Share Company to be offered for sale and widely distributed and sold in interstate commerce; that defendant Electric Bond and Share Company, or its wholly owned subsidiary, Ebasco Services, Incorporated, or both, in the normal course of business, and by use of the mails and the means and instrumentalities of interstate commerce, are taking and will continue to take steps in the performance of such financial services.

XXII

That defendant American Gas and Electric Company, in the ordinary course of its business by constant use of the mails and the means and instrumentalities of interstate commerce, is continuously engaged and will continue to engage in taking steps in the performance of a complete range of supervision and management services for its subsidiary holding companies and operating public utility companies, including financial, accounting, auditing, commercial, purchasing, valuation, engineering, insurance, statistical, and other services.

That the defendant American Gas & Electric Company has established and maintains at its offices in New York City nine or more service departments, employing approximately 300 persons, who are engaged in the performance of supervisory and management services for the holding companies and public utility companies in the American Gas & Electric System. That a substantial portion of the corporate expense of the defendant American Gas & Electric Company is incurred in the maintenance and operation of its servicing departments. That in consideration of an agreed rate of compensation paid to it, the American Gas & Electric Company,

96 through its servicing departments, performs the following services for the holding companies and public utility companies in the American Gas and Electric System:

1. EXECUTIVE OFFICES.—Supplies a complete staff of corporate officers to each of the subsidiary companies. Such corporate officers are chosen from among the officers and directors of the defendant American Gas & Electric Company.

2. LEGAL STAFF.—Cooperates with the officers and attorneys of the subsidiary companies in examining all laws relating to the business of such companies; prepares and records mortgages, negotiates and prepares contracts, examines and prepares deeds, prepares applications for the qualification of securities and applications to and protests before regulatory bodies and tax commissions, and furnishes legal representation upon other legal problems of the subsidiary companies.

3. PURCHASING STAFF.—Purchases substantially all materials, supplies and equipment for the subsidiary companies, relieving these companies of all details after they have requisitioned their needs to this department.

4. AUDITING AND ACCOUNTING DEPARTMENT.—Checks and audits the journal entries, general accounts, consumers' accounts receivable, inventory, freight bills and classifications of the subsidiary companies.

5. SECURITY DEPARTMENT.—Prepares and mails all dividend checks of the subsidiary companies, keeps the records of the stockholders of these companies by daily posting stock transfers, prepares new issues of bonds for execution and delivery, and arranges for the payment and cremation of coupons.

6. TAX DEPARTMENT.—Prepares for the subsidiary companies all reports for tax and regulatory commissions, including Federal income tax reports, and represents the subsidiary companies on all contested tax matters.

7. INSURANCE DEPARTMENT.—Inspects the property of the subsidiary companies to determine its valuation, negotiates for and places insurance coverage on this property and handles the preparation and presentation of all claims. Also coordinates plans for accident prevention among the subsidiary companies.

8. COMMERCIAL DEPARTMENT.—Prepares for the subsidiary
97 companies' rate structure, organizes and directs the solicitation of all new business, advertising, demonstrations, and the conduct of sales schools for the employees of the subsidiary companies.

9. ENGINEERING DEPARTMENT.—Makes surveys of the operating conditions of the subsidiary companies, including efficiency of combustion, cost of labor and transmission, interconnections and relay systems, and serves as instructors of the operating personnel of the subsidiary companies.

10. Other departments whose duty it is to keep statistical and other records for the common use of the subsidiary companies in order to facilitate an interchange of equipment and of experience in methods of operation.

XXIII

That defendant Electric Bond and Share Company, in performing its obligations under the service, sales, and construction contracts described in paragraphs XVII and XVIII hereof, either in its own name or through its wholly owned subsidiaries, Ebasco Services, Incorporated, and Phoenix Engineering Corporation, since December 1, 1935, has engaged and will continue to engage in a business in interstate commerce within the meaning of Section 4 (a) (5) of the Act. That these contracts contemplate and their performance requires and depends upon, continuous and regular intercourse in interstate commerce and frequent transportation in interstate commerce of information in the form of books, periodicals, apparatus, papers, pamphlets, reports, and forms between offices of the Electric Bond and Share Company in New York City and the client subsidiary companies in 32 states other than the State of New York. That in these contracts, defendant Electric Bond and Share Company undertakes to and does send, as frequently as may be necessary, from its principal offices in New York to the companies served, sponsors, operating specialists, and engineers to confer, advise, and assist with respect to the problems of the operating companies, and that this obligation contemplates and its performance necessitates transportation in interstate commerce. That the accounting, financial, legal, and other services performed pursuant to said contracts from the offices of Electric Bond and Share Company in New York City by its officers and employees in said city to the client
98 companies in other states, contemplate and depend for their accomplishment, upon, and are performed by means of, interstate communication and interstate commerce. That in accordance with the provisions of the contracts with its client subsidiary companies, defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, negotiates contracts and itself enters into contracts for the sale of equipment and supplies to the client companies, which contracts contemplate, and the performance of which requires and depends upon, and which are performed by means of, transportation in interstate commerce. That in accordance with the provisions of its contracts with client subsidiary companies, defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, supervises the transportation in interstate commerce of equipment and supplies to client companies. That in accordance with the terms of contracts between itself and client subsidiary companies, defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, conducts an apparatus exchange for the purchase, sale, and exchange of second-hand apparatus and materials among client companies and between client companies and other companies, and that the conduct of such apparatus exchange contemplates and requires shipments

of apparatus and materials in interstate commerce. That defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, in accordance with the terms of its contracts with client subsidiary companies, as their business needs require, negotiates and takes charge of the sale and distribution in interstate commerce of the securities of client companies and directs from its New York offices, through the channels of interstate commerce, the sale of the securities of client companies to their customers in the territories which they serve. That defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiaries, Ebasco Services, Incorporated, or Phoenix Engineering Corporation, regularly purchases and ships materials, supplies, and equipment in interstate commerce as contemplated in, and required by, the construction contracts negotiated and entered into as here-
99 inabove set forth. That defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiaries, Ebasco Services, Incorporated, and Phoenix Engineering Corporation, receives compensation from its client subsidiary companies for the performance of the services described in this paragraph, in accordance with the terms of the standard contract as hereinabove set forth. That the compensation so received constitutes a substantial part of the earnings of defendant Electric Bond and Share Company. That the performance for compensation of the services described in this paragraph constitutes a business in interstate commerce, and that defendant Electric Bond and Share Company, both in its own name and through its wholly owned subsidiaries Ebasco Services, Incorporated, and Phoenix Engineering Corporation, although not registered under the Act, will continue to engage in such business in interstate commerce in violation of Section 4 (a) (5) of the Act.

XXIV

That defendant American Gas and Electric Company, in the ordinary course of its business, is regularly engaged in rendering supervision, management, and construction services for its subsidiaries, as hereinabove alleged, and that the performance of such services requires and causes regular and continuous intercourse in interstate commerce and transportation in interstate commerce of apparatus, materials, supplies, securities, books, pamphlets, periodicals, reports, papers, and forms. That the performance of these services by defendant American Gas and Electric Company constitutes engaging in business in interstate commerce, and that the defendant American Gas and Electric Company, although not registered under the Act, is engaging and will continue to engage in such business in interstate commerce in violation of section 4 (a) (5) of the Act.

XXV

Wherefore, pursuant to the provisions of section 18 (f) and (of Title I of the Public Utility Holding Company Act of 1935, the plaintiff respectfully prays:

(1) That each of the defendants be required to answer this amended and supplemental bill of complaint.

100 (2) That each and all of the defendants, by appropriate order of this court, be enjoined from violating any of the provisions of Section 4 (a) of the act, and be required to register pursuant to the provisions of Section 5 of said Act.

(3) For such other and further relief as the court may deem appropriate in the premises.

_____ _____,
General Counsel, Securities and Exchange Commission;

_____ _____,
Special Counsel,
Solicitors for the Plaintiff.

Office and Post Office Address, Room 1024, Securities and Exchange Commission, Washington, D. C., or 120 Broadway, New York City.

Exhibit A

Rule 3 A–2

Acting pursuant to authority conferred upon it by the Public Utility Holding Company Act of 1935, particularly section 3 (a) thereof, and finding that the exemption provided by the following Rule is not detrimental to the public interest or the interest of investors or consumers, the Securities and Exchange Commission hereby adopts the following Rule:

Rule 3 A–2. TEMPORARY EXEMPTION OF HOLDING COMPANIES.—(a) Subject to the time limitations specified in paragraph (b) of this Rule, any holding company shall be exempt from any obligation, duty, or liability imposed by the Act upon such company as a holding company, if—

(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominately intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

(2) such holding company is predominately a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;

(3) such holding company is only incidentally a holding company, being primarily engaged or interested in one or

more businesses other than the business of a public-utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company;

(4) such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities; or

(5) such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.

(b) The exemptions provided by this rule shall continue until and including February 2, 1936, except that the exemption provided by sub-paragraph (a) (1) hereof shall continue until termination thereof by the Commission, either by amendment or repeal of this Rule.

Exhibit H to affidavit

Cases Filed Against Members of the Securities and Exchange Commission and Other Officers of the United States

Name of plaintiff	Court in which filed	Date of filing bill of complaint
The United Gas Improvement Company	U. S. District Court for the Eastern District of Pennsylvania.	Nov. 20, 1935.
Philadelphia Electric Company	U. S. District Court for the Eastern District of Pennsylvania.	Nov. 21, 1935.
The North American Company	Supreme Court of the District of Columbia.	Nov. 26, 1935.
Consolidated Gas Company of New York Central Union Gas Company New Amsterdam Gas Company The New York Edison Company, Inc Brooklyn Edison Company, Inc	U. S. District Court for the Southern District of New York.	Nov. 25, 1935.
Delaware Electric Power Company	U. S. District Court for the District of Delaware.	Nov. 21, 1935.
Susquehanna Utilities Company	U. S. District Court for the District of Delaware.	Nov. 21, 1935.
102 The Commonwealth & Southern Corporation	U. S. District Court for the District of Delaware.	Nov. 23, 1935.
American Water Works and Electric Company, Incorporated	Supreme Court of the District of Columbia.	Nov. 27, 1935.
Sierra Pacific Electric Company	U. S. District Court for the District of Maine-Southern Division.	Nov. 27, 1935.
The United Corporation New York United Corporation	U. S. District Court for the Southern District of New York.	Nov. 27, 1935.
Standard Gas and Electric Company	U. S. District Court for the District of Delaware.	Nov. 27, 1935.
The Western Public Service Company	U. S. District Court for the District of Maryland.	Nov. 27, 1935.
Stone & Webster, Incorporated	U. S. District Court for the District of Delaware.	Nov. 26, 1935.

Cases Filed Against Members of the Securities and Exchange Commission and Other Officers of the United States—Continued

Name of plaintiff	Court in which filed	Date of filing bill of complaint
Engineers Public Service Company	U. S. District Court for the District of Delaware.	Nov. 26, 1935.
Stone & Webster Utilities Corporation	U. S. District Court for the District of Delaware.	Nov. 26, 1935.
Eastern Texas Electric Company	U. S. District Court for the District of Delaware.	Nov. 25, 1935.
El Paso Electric Company	U. S District Court for the District of Delaware.	Nov. 28, 1935.
The United Light and Power Company	Supreme Court of the District of Columbia.	Nov. 29, 1935.
Continental Gas & Electric Corporation Iowa-Nebraska Light and Power Company American Light & Traction Company	Supreme Court of the District of Columbia. Supreme Court of the District of Columbia.	Nov. 29, 1935. Nov. 29, 1935.
The United Light and Railways Company United American Company United States Electric Power Corporation	Supreme Court of the District of Columbia. U.S. District Court for the District of Maryland.	Nov. 29, 1935. Nov. 29, 1935.
The West Penn Electric Company	U. S. District Court for the District of Maryland.	Nov. 29, 1935.
103 Associated Gas and Electric Company Associated Gas and Electric Corporation Associated Electric Company Pennsylvania Electric Corporation NY PA NJ Utilities Company General Gas & Electric Corporation Southeastern Electric & Gas Company Eastern Power Corporation Associated Utilities Corporation American Utilities Company	U. S. District Court for the District of Delaware.	Nov. 30, 1935.
North American Light & Power Company	U. S. District Court for the District of Delaware.	Nov. 30, 1935.
North American Edison Company	U. S. District Court for the District of Delaware.	Nov. 30, 1935.
American Utilities Service Corporation	U. S. District Court for the Northern District of Illinois.	Nov. 30, 1935.
The Tennessee Electric Power Company	Supreme Court of the District of Columbia.	Dec. 3, 1935.
The United Corporation New York United Corporation	U. S. District Court for the District of Delaware.	Nov. 29, 1935.
Cities Service Company et al Cities Service Power & Light Co. Arkansas Natural Gas Corporation Ohio Utilities Finance Company The Lake Shore Power Company The Ohio Public Service Company The Toledo Edison Company Toledo Light & Power Company Public Service Company of Colorado	U. S. District Court for the District of Delaware.	Nov. 29, 1935.
Cities Service Company Cities Service Power & Light Company Arkansas Natural Gas Company Ohio Utilities Finance Company Lakeshore Power Company Ohio Public Service Company Toledo Edison Company Toledo Light & Power Company Public Service Company of Colorado	U. S. District Court for the Southern District of New York.	Nov. 29, 1935.
Toledo Edison Company Ohio Public Service Company Lake Shore Power Company Ohio Utilities Finance Company Cities Service Company Service Power & Light Company Toledo Light and Power Company Public Service Company of Colorado	U. S. District Court for the Northern District of Ohio—Western Division.	Nov. 29, 1935.
Cities Service Company Cities Service Power & Light Company	U. S. District Court for the District of Colorado.	Nov. 29, 1935.
104 Standard Power & Light Corporation	U. S. District Court for the District of Delaware.	Nov. 27, 1935.
Charles B. Barnes et al. (Eastern Utilities Association). Federal Light & Traction Co. and Central Arkansas Public Service Corporation.	U. S. District Court for the District of Massachusetts. U. S. District Court for the Southern District of New York.	Nov. 30, 1935.
East Tennessee Light & Power Cities Service Company Cities Service Power & Light Company	U. S. District Court for the Western District of Virginia.	Nov. 29, 1935.

Cases Filed Against Members of the Securities and Exchange Commission and Other Officers of the United States—Continued

Name of plaintiff	Court in which filed	Date of filing bill of complaint
Northern States Power Co. et al. (22 plaintiffs in all).	U. S. District Court for the District of Minnesota.	
North Continent Utilities Corporation	U. S. District Court for the District of Delaware.	Nov. 29, 1935.
American Gas & Power Company	U. S. District Court for the District of Delaware.	Nov. 27, 1935.
Louisville Gas & Electric Company	U. S. District Court for the District of Delaware.	Nov. 27, 1935.
Northeastern Water & Electric Corporation	U. S. District Court for the District of Delaware.	Dec. 4, 1935.
H. M. Byllesby & Company	U. S. District Court for the District of Delaware.	Nov. 30, 1935.
The Byllesby Corporation	U. S. District Court for the District of Delaware.	Nov. 30, 1935.
The Columbus Railway, Power & Light Company.	U. S. District Court for the Southern District of Ohio—Eastern Division.	Nov. 30, 1935.

Cases between private litigants

Title of Case	Court in Which Filed	Date of Filing Bill of Complaint
Albert E. Peirce and Central Public Service Company, etc., v. Central Public Utility Corporation and Consolidated Gas Company.	U. S. District Court for the District of Delaware.	Dec. 4, 1935.
National Public Utilities Corporation (Stockholders' Suit).	U. S. District Court for the District of Delaware.	
Public Utility Investing Corporation v. Utilities Power & Light Corp. et al.	U. S. District Court for the Southern District of New York.	Nov. 30, 1935.
Theodore W. Case, etc., v. Columbia Gas & Electric Company.	U. S. District Court for the Southern District of New York.	Nov. 20, 1935.
Burco, Inc., v. J. B. Whitworth and F. Donald Fenhagen, Trustees of the Estate of American States Public Service Company, The Debtor.	Circuit Court of Appeals—Fourth Circuit.	

[Copy]

105 *Exhibit I to affidavit*

Law Offices of Winthrop, Stimson, Putnam & Roberts, Mutual Life Building, No. 32 Liberty Street, New York City. Cable Address "Winstim"

NOVEMBER 29, 1935.

Hon. HOMER S. CUMMINGS,
The Attorney General of the United States,
Washington, D. C.

SIR: The Commonwealth & Southern Corporation, a Delaware corporation whom we represent, has brought suit in equity in the United States District Court for the District of Delaware praying that the Public Utility Holding Company Act of 1935 be declared to be unconstitutional and void as concerns said Company and seeking a permanent injunction against its enforcement as to it. The suit was filed on November 23rd, 1935, and the United States Attorney for the District of Delaware and the Postmaster of the City of Wilmington were served with process on that date. The Attorney

General of the United States, the Postmaster General, and the members of the Securities and Exchange Commission were also made parties, and copies of the bill of complaint were mailed on the same date to them.

The bill contains a prayer for a preliminary injunction pending the hearing and determination of the suit. It has been also the intention of the plaintiff to apply for a temporary restraining order prior to December 1st, pending the determination of the motion for a preliminary injunction.

We have advised our client that, in view of this public assurance, both the Corporation and its officers could safely rely on the pur-
pose of the Department of Justice and all United States
106 Attorneys not to institute any criminal proceedings for alleged
offenses against the Act committed prior to a determination by the Supreme Court as to its validity, and that, in our opinion, it would therefore be unnecessary to proceed with either the motion for the temporary restraining order or the motion for a preliminary injunction in the pending suit.

Very respectfully yours,

WINTHROP, STIMSON, PUTNAM & ROBERTS.

Exhibit J to affidavit

In the District Court of the United States for the Southern District of New York

In Equity. No. E81–378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION, AND UNITED GAS CORPORATION, DEFENDANTS; AND POWER SECURITIES CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, AND EASTON CONSOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS; HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES; JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES; AND JAMES M.

LANDIS, ROBERT E. HEALY, GEORGE C. MATHEWS, AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION, CROSS-DEFENDANTS

107 Answer, Counterclaim and Cross-Bill. Stipulation and Order Bringing in Additional Parties as Cross-Defendants and Intervenors. Bill of Intervention of Subsidiary Companies.

In the District Court of the United States for the Southern District of New York

In Equity. No. E81-378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF,

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION AND UNITED GAS CORPORATION, DEFENDANTS; AND POWER SECURITIES
108 CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY AND EASTON CONSOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS; HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES; JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES; AND JAMES M. LANDIS, ROBERT E. HEALY, GEORGE C. MATHEWS, AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION, CROSS-DEFENDANTS.

Answer of Defendants and Invervening Defendants to the Amended and Supplemental Bill of Complaint

Defendants Electric Bond and Share Company (hereinafter called "Bond and Share"), American Gas and Electric Company (hereinafter called "American Gas"), American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation and United Gas Corporation and intervening defendants Power Securities Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company,

Pacific Power & Light Company, Lehigh Power Securities Corporation, Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, The Washington Water Power Company, Pennsylvania Power & Light Company and Easton Consolidated Electric Company for their joint and several answer to the Amended and Supplemental Bill of Complaint (hereinafter referred to as the "Bill") herein:

(Admissions, allegations, or denials made without specification of a particular defendant or defendants are made by each defendant severally and by all defendants jointly. Allegations or denials referring to any particular defendant or defendants are made
109 by the defendant or defendants to whom the same refer and, on information and belief, are adopted by the other defendants. The intervening defendants are included within the terms "defendant" or "defendants" as used herein.)

For a first defense

1. For the purposes of this suit, and not otherwise, and reserving all objections or exceptions which might be raised as matter of law to the Bill by motion to dismiss, motion to strike, or otherwise, in this suit, and further reserving the right to deny, qualify, or explain in any future suit or proceeding between the parties hereto, or other parties, any admission hereby made, admit all the allegations (or representations) of the Bill, except as hereinafter specifically denied, subject to explanations or qualifications hereinafter made.

2. In admitting any of the allegations of the Bill, particularly but not limited to those in paragraphs III, IV, V, VII, XXIII, XXIV and XXV, which refer to or are based upon the Public Utility Act of 1935, generally referred to as the "Act", defendants allege that said Act is unconstitutional and void, and confers no rights upon plaintiff, and imposes no duties upon defendants, or any of them, for the reasons fully set forth in defendants' separate Defense, Counterclaim, and Cross-Bill (hereinafter referred to as the "separate defense") filed herewith, and hereby made a part of this Answer. The requirement of registration invoked by plaintiff herein is not separable from the other requirements and provisions of said Act, but is an integral part thereof subjecting defendants and each of them to prohibitions, disabilities, liabilities, and penalties, to which said defendants may not lawfully or constitutionally be subjected.

(In the following paragraphs of this Answer references are to the paragraph and page of the Bill which are denied, explained, or otherwise referred to in the text immediately following.)

3. Par. VI, pp. 4–6. Deny that defendant Bond and Share is a top holding company in a "holding company system" except in the limited and arbitrary sense in which the term "holding company system" is defined in the Act, and allege that, as set forth in
110 the separate defense and the exhibits thereto, the defendants and their respective subsidiary companies are separate cor-

porate entities and are separately managed and directed, and deny that defendant Bond and Share "controls" defendants American Gas, American Power & Light Company, Electric Power & Light Corporatiin, or National Power & Light Company, or any thereof, except to the extent hereinafter alleged. Deny that said defendant Bond and Share either owns or controls any electric or gas public utility company, but admits that said defendant exercises such degree of influence or control over the other defendants above mentioned, and through them of their electric and gas public utility subsidiary companies, as is inherent in defendant Bond and Share's stock ownership in such other defendants, which is set forth in paragraph VIII of the Bill. Such influence and control is exercised by voting the stock owned by defendant Bond and Share, and not by common officers, directors, or employees, or direct participation in the management, of such other defendants or their subsidiary companies.

With reference to the allegations of paragraph VI of the Bill as to the operating revenues of the so-called "Electric Bond and Share system", defendants allege that the revenues of the operating public utility subsidiary companies within such so-called systems are derived principally from the sale of gas and electric energy, and that some part of such revenues is reflected in interest and dividend payments to the holding company defendants, and allege that defendant Bond and Share receives substantial revenues from sources other than sales of either gas or electric energy within the United States.

Deny that the electric properties in such so-called system constitute interstate groups, except in so far as transmission lines extend across state boundaries interconnecting electric generating stations and transmission and distribution systems in different states. Allege that the electric public utility companies within the seven groups referred to in the Bill, are predominantly intrastate companies engaged primarily in generation, distribution, and sale of electric power and energy within the states in which they respectively operate, subject to the jurisdiction and control of such states and the regulatory authorities thereof, and that the transmission of electric
111 energy across state boundaries is generally accomplished by the generating company for subsequent sale by it (or in some instances by associate companies) at retail within the state to which such energy is transmitted. Admit, however, that, in certain cases specifically referred to in the separate defense, and the exhibits thereto, some of the subsidiary electric utility companies of the holding companies described in the Bill do sell electric energy moving across state boundaries, to the extent and in the approximate amounts set forth in such separate defense and the exhibits thereto. Such electric utility companies are not common carriers and their interstate business, if any, is severable and distinct from their intrastate business.

Deny that the gas properties in such so-called system form interconnected interstate systems for the production and transmission of

manufactured and natural gas. Allege that some of said gas properties are entirely intrastate, both as to production, transmission and sale, and that others of said gas properties engage primarily in intrastate production, distribution, and sale of natural or manufactured gas, having as a minor and distinct portion of their business the transmission of gas produced or purchased by them in one state across a state boundary to another state, where it is distributed and sold at reduced pressure and at retail, subject to the jurisdiction and control of said state and the regulatory authorities thereof. Allege that others of said gas properties do have extensive pipe line facilities crossing state boundaries by which large amounts of gas are transmitted from one state to another, for retail sale at reduced pressure in the state to which transmitted by the same company (or in some instances by associate companies), subject to the jurisdiction and control of such state and its regulatory authorities. Admit, however, that in certain cases specifically referred to in the separate defense and the exhibits thereto, certain of such gas utility companies sell natural or manufactured gas moving across state boundaries, to the extent and in the approximate amounts set forth in such separate defense and the exhibits thereto. Such gas utility companies are not common carriers and their interstate business, if any, is severable and distinct from their intrastate business.

112 4. Par. VII, subpar. 1, p. 6. Deny that since December 1, 1935, or prior thereto, defendants Bond and Share, American Gas, American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation, United Gas Corporation, Power Securities Corporation, Lehigh Power Securities Corporation, or Easton Consolidated Electric Company, or any of them, have engaged or will engage in selling, transporting, transmitting or distributing either natural or manufactured gas or electric energy. Deny that since December 1, 1935, or prior thereto, any of the defendants have owned or operated or will own or operate utility assets for the transportation, transmission, or distribution of natural or manufactured gas or electric energy in interstate commerce or across state boundaries, except that: defendants Idaho Power Company, Utah Power & Light Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, Appalachian Electric Power Company, The Ohio Power Company, and The Washington Water Power Company in some instances transmit, and in other instances sell, electric energy across state boundaries, and defendant United Gas Public Service Company transmits, and in some cases sells, gas across state boundaries. Certain subsidiaries of certain of the defendants, in some cases transmit, and in some cases sell, electric energy or gas across state boundaries. The extent which these defendants, and the subsidiary companies of any of the defendants, transmit or sell electric energy or gas across state boundaries is stated in the separate defense and the exhibits thereto.

Par. VII, subpar. 2, p. 6. Deny that defendant Bond and Share is engaged or will engage in taking steps in the performance of service, sales or construction contracts, or the performance of similar contracts, but admit that Ebasco Services Incorporated, a wholly owned subsidiary company of defendant Bond and Share, is engaged and will take steps in the performance of service contracts, and that Phoenix Engineering Corporation, a wholly owned subsidiary of said Ebasco Services Incorporated, will take steps in the performance of service and construction contracts.

Deny that defendant American Gas has entered into service,
113 sales or construction contracts, but admit that it has made arrangements whereby it has made available and rendered and will continue to make available and render to its subsidiary operating public utility companies services of the nature described in paragraph XXII of the Bill.

Deny that either defendant Bond and Share or defendant American Gas or Ebasco Services Incorporated, or Phoenix Engineering Corporation, has made or will make or perform any sales contracts with public utility companies or holding companies, or is engaged in selling or will sell goods to public utility companies or holding companies.

Par. VII, subpar. 3, p. 7. Defendants are without knowledge whether they will in the future distribute or make public offerings for sale or exchange of their own securities or the securities of their subsidiary companies or affiliates, or any thereof.

Par. VII, subpar. 4, p. 7. Defendants are without knowledge whether they will in the future acquire or negotiate for the acquisition of securities of their subsidiary companies or affiliates or of public utility or holding companies.

Par. VII, subpar. 5, p. 7. Deny that either defendant Bond and Share or defendant American Gas have engaged since December 1, 1935, or will engage in business in interstate commerce.

Deny that any of the defendants have engaged or will engage in interstate commerce, except to the extent that any of the acts specified in the separate defense and the exhibits thereto, may be held to constitute interstate commerce.

Par. VII, subpar. 6, pp. 7–8. Deny that defendant Bond and Share owns, controls or holds voting securities of any electric or gas public utility company, but admit that it owns voting securities of defendant holding companies as alleged in Paragraph VIII of the Bill, which defendants in turn own voting securities of electric and gas utility subsidiary companies. The extent to which such subsidiary companies of the defendants, or any thereof, sell, transport, transmit or distribute natural or manufactured gas or electric energy, or own or operate utility assets therefor, across state boundaries, is
114 set forth in the separate defense and the exhibits thereto, and except to the extent that transactions therein set forth may

be held to constitute interstate commerce, defendants deny that subsidiary companies of said defendants are engaged in interstate commerce or in the ownership of utility assets therefor.

Par. VII, subpar. 7, p. 8. Deny that any subsidiary company of defendant Bond and Share is engaged in the performance of sales contracts or in selling goods to public utility companies or holding companies.

5. Pars. IX, X, XI, XII, and XIII, pp. 9–13. Deny the allegations of these paragraphs that defendants respectively own "substantially all" of the voting securities of the subsidiary companies so specified in said paragraphs, except to the extent stated in the separate defense, where the percentages of said securities owned by defendants are accurately set forth. In this connection defendants do not deny that the ownerships so specified are in each case sufficient to constitute voting control for the purpose of election of directors and other matters requiring stock vote.

Par. XII, subpar. 1, p. 11. Deny that United Production Corporation, Southern Gas & Fuel Company, and Compania Mexicana de Gas, S. A., are public utility companies.

Par. XIII, subpar. 1, p. 12. Deny that Susquehanna Gas Company is a public utility company. Deny that defendant Pennsylvania Power & Light Company owns any of the voting securities of The Carlisle Gas and Water Company, Columbia Gas Company, Pine Grove Electric Light, Heat & Power Company, or Shenandoah Light, Heat and Power Company, and allege that pursuant to the provisions of an order of the Public Service Commission of the Commonwealth of Pennsylvania dated November 25, 1935, such companies and the properties and business thereof were merged into or consolidated with those of defendant Pennsylvania Power & Light Company, and further allege that said defendant Pennsylvania Power & Light Company, in addition to owning all or substantially all of the voting securities of Lehighton Electric Light and Power Company, as alleged in the Bill, also owns or controls 50% of the voting securities of Stanton Operating Company and approximately 27% of the voting securities of Conestoga Transmission Company, which are electric utility companies.

115 6. Par. XIV, p. 13. Allege that the exemption of the companies named in said paragraph from the provisions of the Holding Company Act under the terms of the rule set forth in Exhibit A attached to the Bill is a temporary exemption existing in the sole discretion of the plaintiff and that such companies have no means of knowing whether said exemption will continue after February 2, 1936; that such companies are subsidiary companies of the defendant Bond and Share and of their respective holding companies, within the meaning of Section 2 (a) (8) of the Act, and are not entitled to exemption or to claim exemption as subsidiary companies under said Act, and that exemption of said companies as holding companies will be without substantial value to them if defendant Bond and Share or their respective holding companies

shall be required to register under the Act, as such companies would remain subsidiary companies subject to all or practically all the provisions of said Act.

7. Par. XV, subpar. 1, pp. 14–16. Deny that electric energy is transmitted in interstate commerce, or that lines, assets, or facilities therefor are owned, leased or operated, by the defendants or any of them or by any of their subsidiary companies except in the manner and to the extent alleged in the separate defense and the exhibits thereto and except in so far as the transactions therein described may be held to constitute interstate commerce. Defendants admit that the figures stated in the tables set forth on pages 15 and 16 of the Bill are substantially correct on the premises stated and defined on said page 15, but deny that the electric energy transmitted across state boundaries is transmitted in interstate commerce or is "interstate electric energy" except in so far as sales of such electric energy in the manner and amounts set forth in the separate defense and the exhibits thereto may be held to constitute interstate commerce, and defendants refer thereto for a statement of the facts. Defendants deny that the act of selling electric energy across state boundaries in itself constitutes interstate commerce subject to Federal regulation or control.

In admitting the figures stated in the table set forth on said pages 15 and 16, defendants further allege that while the figures are approximately accurate on the basis of information available, it
116 is impossible to state such figures with complete accuracy because of mechanical difficulties of measurement, including the absence of state line meters, the records in certain cases having been kept only for the purpose of showing net deliveries or transfers. Furthermore, the figures stated include duplications of more than 1,184,000,000 kilowatt hours, substantially as follows:

American Gas and Electric System: In 1933 The Ohio Power Company delivered at or near the Ohio-Indiana boundary approximately 300,000,000 kilowatt hours to Indiana & Michigan Electric Company, which figure is included in the total quantities of electric energy and so-called interstate electric energy handled by said Indiana & Michigan Electric Company and The Ohio Power Company.

In 1933 The Ohio Power Company delivered at or near the Ohio-West Virginia boundary approximately 100,000,000 kilowatt hours to Appalachian Electric Power Company, and this transaction is included in the total quantities of electric energy and so-called interstate electric energy handled by each of said companies. In the same year, Appalachian Electric Power Company delivered at or near said Ohio-West Virginia boundary approximately 100,000,000 kilowatt hours to The Ohio Power Company and this transaction is also included in the total quantities of electric energy and so-called interstate electric energy handled by each of said companies.

American Power & Light System: Minnesota Power & Light Company in 1933 delivered at or near the Minnesota-Wisconsin boundary approximately 18,396,000 kilowatt hours to Northern Power Com-

pany and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Minnesota Power & Light Company and Northern Power Company.

Minnesota Power & Light Company in 1933 delivered at or near the Minnesota-Wisconsin boundary approximately 12,351,000 kilowatt hours to Superior Water, Light and Power Company and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Minnesota Power & Light Company and Superior Water, Light and Power Company.

117 Electric Power & Light System: Louisiana Power & Light Company in 1933 delivered at or near the Louisiana-Arkansas boundary approximately 164,973,000 kilowatt hours to Arkansas Power & Light Company and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Louisiana Power & Light Company and Arkansas Power & Light Company.

Louisiana Power & Light Company in 1933 delivered at or near the Louisiana-Mississippi boundary approximately 126,559,000 kilowatt hours to Mississippi Power & Light Company and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Louisiana Power & Light Company and Mississippi Power & Light Company.

National Power & Light System: In 1933 Carolina Power & Light Company delivered to Tennessee Public Service Company at or near the Tennessee-North Carolina boundary approximately 89,821,000 kilowatt hours which figure is included in the total quantities of electric energy handled, and as representing the so-called interstate electric energy handled, by said Tennessee Public Service Company and is also included in the total quantities of electric energy and the so-called interstate energy handled by said Carolina Power & Light Company.

In addition, in 1933, Carolina Power & Light Company itself delivered at a point at the North Carolina-Virginia boundary and arranged for Tennessee Public Service Company, an associate company, to deliver at Kingsport, Tennessee, approximately 260,000,000 kilowatt hours of electric energy to Appalachian Electric Power Company, and this transaction is included in the total quantities of electric energy and so-called interstate electric energy handled by both Carolina Power & Light Company and Appalachian Electric Power Company. In the same year Appalachian Electric Power Company delivered to Carolina Power & Light Company itself, or to Tennessee Public Service Company for the account of said Carolina Power & Light Company at the same points of delivery, approximately 12,500,000 kilowatt hours and this transaction is included in the total quantities of electric energy and the so-called interstate electric energy handled by both Appalachian Electric Power Company and Carolina Power & Light Company.

8. Par. XV, subpar. 2, pp. 16–17. Deny that natural or manufactured gas is transmitted in interstate commerce by
118 the gas utility companies which are subsidiary companies of defendants United Gas Corporation or American Power & Light Company or that said gas utility companies own, lease, or operate utility assets for such transmission or take part in such transmission except in the manner and to the extent that the acts set forth in the separate defense and the exhibits thereto may be held to constitute interstate commerce. Deny that subsidiary companies of defendant United Gas Corporation own or operate utility assets for the transmission of or transmite or take part in the transmission of natural or manufactured gas in interstate commerce except to the extent that the acts set forth in the separate defense and the exhibits thereto may be held to constitute interstate commerce. Deny that Consolidated Gas Utilities Company is a subsidiary company of United Gas Corporation. Deny that subsidiary gas public utility companies of defendant American Power & Light Company own or operate utility assets for the transmission of or transmit or take part in the transmission of either natural or manufactured gas in interstate commerce except to the extent that the acts set forth in the separate defense and the exhibits thereto may be held to constitute interstate commerce. Defendants deny that the act of selling gas across state boundaries itself constitutes interstate commerce subject to Federal regulation or control.

9. Par. XVI, subpar. 1, p. 18. Deny that, except as hereinafter alleged, defendant Bond and Share organized defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, or American Gas; deny that defendant Bond and Share had the purpose or intention of employing said companies as its corporate instrumentalities for the acquisition, financing, or control of operating public utility companies; deny that at the time of the organization of the said companies defendant Bond and Share acquired, by subscription or purchase, or in exchange for property, voting securities of said companies in an amount sufficient to enable it to dominate or control the affairs of said companies; deny that it retained voting securities in amounts sufficient to insure such domination and control.

Allege that, defendant Bond and Share took a leading part,
and a substantial financial interest, in organizing or
119 creating such financial or underwriting syndicates as were required or used in the organization of said defendant holding companies. In some cases defendant Bond and Share turned over to the newly organized holding companies the stock of operating public utility companies owned by it; in others, the holding companies acquired directly from former owners, other than defendant Bond and Share, the stocks of such operating public utility companies. In other cases the holding companies acquired from former owners,

other than defendant Bond and Share, some stocks of operating public utility companies, and in adition thereto defendant Bond and Share turned over to such holding companies some stocks of operating public utility companies owned by it. Upon the completion of the prerequisite financial arrangements, defendant Bond and Share became, in effect, managing agent for the said syndicates in accomplishing the organization of said holding companies. The administrative, supervisory, investigating, and clerical work was done by or under the direction of defendant Bond and Share. Defendant Bond and Share employed for the account of said syndicates, or the newly organized holding companies attorneys, auditors, engineers, and such other professional or expert services as so acquired. Said work was done for the account of each of such newly organized holding companies, and was paid for by them in such manner as may have been agreed upon in each particular case. The initial financial interest taken by defendant Bond and Share in each of said holding companies and the proportion of voting stock initially received by it or issued upon its order varied in different cases. The remainder of the original issue of securities was distributed through syndicate participations or general or limited public subscriptions under the supervision of defendant Bond and Share. The defendant Bond and Share retained the voting securities originally acquired by it, and has subsequently purchased and acquired additional voting stock of said holding companies until it now has the amounts of such stock as alleged in paragraph VIII of the Bill.

Deny that defendant Bond and Share has at any time completely dominated or controlled the corporate activities of said defendant holding companies, but admit that defendant Bond and Share has exercised and now exercises such degree of influence and control over said companies as is inherent in its ownership of the voting securities of said companies, as alleged in paragraph VIII of the Bill, such influence and control being now exercised in the manner alleged in paragraph 3 hereof.

Deny that defendant Bond and Share caused its own officers to be elected directors and officers of any of the said defendant holding companies at the time of the organization thereof, but admit that certain of its directors and executive officers were elected and remained directors and officers of each said defendant holding companies until after the passage of the Act.

Deny that since the passage of the Act defendant Bond and Share caused the resignations of officers and directors of said holding companies or the election of certain of its executive officers as officers and directors of said defendant holding companies, either to create a management subject to the domination or control of defendant Bond and Share, or otherwise, but admit that such officers and directors resigned.

Deny that the officers and directors of said defendant holding companies are persons designated by defendant Bond and Share, or are

persons subject to the direction or control of defendant Bond and Share.

10. Par. XVI, subpar. 2, p. 19. Deny that defendant Bond and Share caused defendants American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company to enter into service contracts or that pursuant thereto defendant Bond and Share performed substantially all of the activities necessary to the conduct of such companies' corporate business and functions, but admit that up to a short time prior to the filing of the original Bill of Complaint herein, such service contracts existed, and officers and employees of defendant Bond and Share acted as the officers of said defendants, and administered their corporate activities, subject to the direction and control of the directors thereof.

Deny that defendant Bond and Share assigned such service contracts with such holding companies to Ebasco Services Incorporated or that defendant Bond and Share itself or through Ebasco Services Incorporated or otherwise, does now or will continue to per-
121 form the services provided for by said contracts, and allege that such contracts were cancelled subsequent to the passage of the Act and prior to the filing of the original Bill of Complaint herein.

11. Par. XVI, subpar. 3, p. 19. Deny that the securities of the public utility companies owned by defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company and American Gas were either transferred to them by defendant Bond and Share or purchased by them at the instance of said defendant, except to the extent hereinbefore set forth in paragraph 9 of this Answer.

Deny that said defendant holding companies last above named perform no other function with reference to companies the stock of which is owned by them, except to serve as, or that they do serve as, a medium through which defendant Bond and Share may publicly finance the operations of operating public utility companies or through which defendant Bond and Share, either with a comparatively small investment, or otherwise, may or does dominate or control the operations of operating public utility companies, and allege that each of said defendant holding companies is separately officered, staffed, directed and financed (except that two officers and directors of defendant Bond and Share are also directors of defendant American Gas) and functions as a corporate entity separate and distinct from that of defendant Bond and Share.

Deny that defendant Bond and Share has used said defendant holding companies as instrumentalities for dominating or controlling the operations of operating public utility companies.

Deny that all important questions of business policy and personnel arising in the operations of the subsidiary public utility companies of said defendant holding companies are determined by defendant Bond and Share. Deny that said public utility com-

panies are controlled or operated as component members of a single system. The method of operation of said companies is hereinafter alleged in the separate defense and the exhibits thereto.

12. Par. XVI, subpar. 4, p. 20. Deny that defendant Bond and Share has controlled or directed or now controls or directs the operations of any operating public utility companies by means
122 of supervisory services rendered to such companies, or otherwise, or that it caused any operating public utility companies to negotiate or enter into service contracts for the performance of services substantially the same as those referred to in paragraph XVIII of the Bill, but admit that it entered into such contracts with many of such companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, but admit that Ebasco Services Incorporated, renders services to operating public utility subsidiary companies of the defendant holding companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, supervises, directs, or controls in any way the operations of its subsidiary operating public utility companies, but admit such supervision by Ebasco Services Incorporated as is provided for in such service contracts.

13. Par. XVI, subpar. 5, p. 21. Deny that defendant Bond and Share has controlled or directed by any means or instrumentality the business and affairs of any public utility companies; that it has caused holding companies to purchase controlling interests in public utility companies; that it has constructed or caused operating public utility companies to construct utility properties; that it has caused the purchase and construction of utility properties or that it has caused the development of interconnections between properties of public utility subsidiary companies of the defendant holding companies, but admit that there has been a development of such interconnections between such public utility properties, and that defendant Bond and Share has assisted in and exerted a substantial influence in the development of the public utility properties of subsidiary companies of the other defendant holding companies.

Deny that defendant Bond and Share, either in its own capacity or through the corporate organizations of the other defendants herein, or otherwise, is engaged or will engage in the transmission in interstate commerce of electric energy or manufactured or natural gas.

14. Par. XVI, subpar. 6, p. 21. Deny that defendant American Gas by virtue of the rendition of supervisory services or otherwise is itself engaged in the interstate transmission of electric energy.

123 15. Par. XVI, subpar. 7, p. 22. Deny that defendants Power Securities Corporation, Lehigh Power Securities Corporation, or Houston Gulf Gas Company are either themselves, or through the instrumentality of their subsidiary public utility com-

panies, engaged in the interstate transmission of electric energy or natural or manufactured gas.

16. Par. XVII, p. 22. Deny each and every allegation contained in paragraph XVII of the Bill. Allege that such services have been rendered in the past, but that the contracts therefor have been cancelled as alleged in paragraph 10 hereof and that such services are no longer rendered.

17. Par. XVIII, pp. 24–29. Deny that defendant Bond and Share, in its own name or through Ebasco Services, Incorporated, or otherwise, but admit that Ebasco Services, Incorporated, by the use of the mails or means or instrumentalities of interstate commerce, is and will be engaged in taking steps in the performance of its existing service contracts with operating public utility companies.

Deny that under such contracts defendant Bond and Share, in its own name or through Ebasco Services, Incorporated, or otherwise, undertakes to render, but admit that Ebasco Services, Incorporated, for an agreed rate of compensation based upon total monthly operating revenues undertakes to render, and does render, extensive services, and that its client operating public utility companies agree to accept such services and to pay for the same.

Admit that the service contracts now being performed by Ebasco Services, Incorporated, provide for rendering services substantially the same as those referred to in paragraph XVIII of the Bill, but allege that no executives or other members of the organizations of defendant Bond and Share or of Ebasco Services, Incorporated, are serving as officers or directors of said client operating companies doing business in the United States.

18. Par. XIX, p. 29. Deny that defendant Bond and Share itself or through the instrumentality of Ebasco Services, Incorporated, or otherwise, controls or directs the purchasing of or purchases the materials, supplies, or equipment required by operating public utility companies, but admit that Ebasco Services, Incorporated, as part of the general services rendered to its client operating public
124 utility companies, renders certain advisory and other services in connection with the purchasing of some, but not all, of the materials, supplies, and equipment required by said operating public utility companies.

Deny that defendant Bond and Share is now a party to any contracts, agreements, or understandings under which materials, supplies, or equipment are purchased by or for the account of public utility operating companies, and deny that Ebasco Services, Incorporated, is a party to any contracts, agreements, or understandings with any manufacturing company under which it undertakes to place orders with any such company for all or any material part of the supplies and equipment required by its client public utility operating companies, but admit that Ebasco Services, Incorporated, has arranged for certain contracts with one or more independent manufacturing companies under which said Ebasco Services,

Incorporated, enables its client operating public utility companies, if they so elect, to place with such manufacturing companies orders for certain but not all of the materials, supplies, and equipment which may be required by such client operating public utility companies, all as more fully set forth in paragraph 38 of the separate defense.

Deny that defendant Bond and Share, either in its own name or through the instrumentality of Ebasco Services, Incorporated, or otherwise, or that said Ebasco Services, Incorporated, purchases any materials, supplies, or equipment for the account of public utility operating companies, but admit that Ebasco Services, Incorporated, makes purchases as agent for its client companies, and, by volume contracts negotiated with manufacturing and supply companies, enables its client operating public utility companies to purchase annually materials, supplies, and equipment valued at several millions of dollars.

Deny that defendant Bond and Share or said Ebasco Services, Incorporated, either causes or will cause any of such materials, supplies, and equipment to be shipped in interstate commerce, except, as to Ebasco Services, Incorporated, to the extent alleged in said paragraph 38 of the separate defense.

19. Par. XX, p. 30. Deny that defendant Bond and Share, through Phoenix Engineering Corporation or otherwise, but admit
125 that Phoenix Engineering Corporation, in accordance with the terms of the service contracts now in effect between Ebasco Services, Incorporated, and the operating public utility companies as hereinabove set forth, in the ordinary course of its business by the use of the mails or means or instrumentalities of interstate commerce, negotiates and enters into construction contracts with operating public utility companies.

Deny that defendant Bond and Share, through Phoenix Engineering Corporation or otherwise, but admit that Phoenix Engineering Corporation, in the ordinary course of its business, by use of the mails or means or instrumentalities of interstate commerce, is engaged in taking steps in connection with the performance of such construction contracts.

20. Par. XXI, p. 31. Deny that defendant Bond and Share and Ebasco Services, Incorporated, or either of them, have caused the securities of defendant American Gas or of its subsidiaries to be offered for sale or distributed or sold in interstate commerce, and allege that they are without knowledge whether they will take any steps in the performance of financial services for defendant American Gas or its public utility subsidiary companies.

21. Par. XXII, pp. 31–32. Deny that services rendered by defendant American Gas are performed in consideration of an agreed rate of compensation paid to defendant American Gas, and allege that such services are rendered to the operating public utility com-

panies at the cost thereof to defendant American Gas, which cost is apportioned between said companies and includes no profit or fee payable to defendant American Gas in excess of such cost.

22. Par. XXIII, pp. 33–35. Deny that defendant Bond and Share, either in its own name or through its subsidiary Ebasco Services, Incorporated, or through said Phoenix Engineering Corporation, or otherwise, since December 1, 1935 has engaged in a business in interstate commerce.

Deny that the performance of service or construction contracts by Ebasco Services, Incorporated, or Phoenix Engineering Corporation contemplates or requires a continuous or regular intercourse in interstate commerce, but admit that such contracts require the transportation across state boundaries of papers, reports and forms be-
126 tween the office of Ebasco Services, Incorporated, and its client operating companies, and admit that the information furnished by Ebasco Services, Incorporated, in connection with the exchange of apparatus results in the transportation of certain apparatus across state boundaries between the place of business of the company selling such apparatus and the place of business of the company purchasing such apparatus.

Deny that defendant Bond and Share, pursuant to these service contracts, or otherwise, sends persons from its offices in New York to operating public utility companies, but admit that Ebasco Services, Incorporated, and Phœnix Engineering Corporation are required to send, and do send, sponsors, operating specialists, engineers, and other employees from their offices in New York to the states in which such public utility companies served by them operate.

Deny that defendant Bond and Share, through its officers or employees or otherwise, performs any services pursuant to such service contracts by any means or instrumentality whatsoever, but admit that the accounting, financial, and other services performed pursuant to said contracts by the officers and employees of Ebasco Services, Incorporated, and Phœnix Engineering Corporation from the offices of said companies in New York City, for public utility operating companies in other states, are performed in part by means of interstate communication and instrumentalities of interstate commerce.

Deny that either defendant Bond and Share or said Ebasco Services, Incorporated, enters into contracts for the sale of equipment or supplies to said client operating companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services, Incorporated, or otherwise, but admit that Ebasco Services, Incorporated, in accordance with the provisions of the contracts with its client operating companies, arranges for the making of contracts under which manufacturing or other companies sell equipment and supplies to said client companies, which contracts are performed in part by means or instrumentalities of interstate commerce.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services, Incorporated, but admit that said
127 Ebasco Services, Incorporated, in accordance with the provisions of its contracts with client operating companies, arranges for the transportation by means or instrumentalities of interstate commerce of equipment and supplies to client companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, but admit that Ebasco Services Incorporated, in accordance with the terms of contracts with its client operating companies, furnishes information and services in connection with the exchange of apparatus by means of which purchases, sales and exchanges of second hand apparatus and materials are made between and among client companies, and between client companies and other companies, and that the conduct of such apparatus exchange contemplates and requires shipments of apparatus and materials by means or instrumentalities of interstate commerce.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, or that Ebasco Services Incorporated, negotiates or takes charge of the sale or distribution in interstate commerce of securities of client operating companies, and deny that at this time either of said companies directs the sale of securities of client companies to persons in the territories which they serve.

Deny that defendant Bond and Share, either in its own name, or through Ebasco Services Incorporated, or through Phoenix Engineering Corporation, or that Ebasco Services Incorporated itself, but admit that Phoenix Engineering Corporation, purchases and arranges for the shipment of materials, supplies and equipment, by means or instrumentalities of interstate commerce as contemplated in and required by the construction contracts negotiated and entered into as hereinabove set forth.

Deny that defendant Bond and Share receives, either in its own name, or through Ebasco Services Incorporated, or through Phoenix Engineering Corporation, but admit that Ebasco Services Incorporated and Phoenix Engineering Corporation receive, compensation from their client companies for the performance of the services referred to in paragraph XXIII of the Bill.

Deny that the performance for compensation of services by
128 Ebasco Services Incorporated or by Phoenix Engineering Corporation, referred to in paragraph XXIII of the Bill constitutes a business in interstate commerce.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, or through Phoenix Engineering Corporation, is engaged in interstate commerce.

23. Par. XXIV, p. 35. Deny that defendant American Gas is engaged in rendering construction services for its subsidiary operating public utility companies, or that the performance of any services

rendered by it to such companies requires any intercourse or transportation in interstate commerce except of reports, stationery, forms and clerical material, the use of facilities of interstate commerce in the transportation of officers and employees, and interstate communication by use of the mails, telephone, and telegraph.

Deny that the performance of any services, as hereinbefore admitted, by defendant American Gas constitutes engaging in business in interstate commerce, or that said defendant is engaged in any business in interstate commerce.

As a Separate and Distinct Defense and by Way of Counterclaim and Cross-Bill

Defendants jointly and severally allege:

24. Defendant Bond and Share and defendants American Gas, American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, United Gas Corporation, Power Securities Corporation, Lehigh Power Securities Corporation, and Easton Consolidated Electric Company, which defendants other than Bond and Share are hereinafter sometimes referred to collectively as "holding company defendants", are duly organized and existing corporations, the states in which they are incorporated and of which they are citizens and residents and the locations of offices respectively maintained by them for the transaction of business being:

129

Defendant	State of incorporation	Location of office
Electric Bond and Share Company	New York	New York, N. Y.
American Gas and Electric Company	New York	New York, N. Y.
American Power & Light Company	Maine	New York, N. Y.
Electric Power & Light Corporation	Maine	New York, N. Y.
National Power & Light Company	New Jersey	New York, N. Y.
United Gas Corporation	Delaware	New York, N. Y.
Power Securities Corporation	New Hampshire	New York, N. Y.
Lehigh Power Securities Corporation	Delaware	New York, N. Y.
Easton Consolidated Electric Company	New Jersey	Allentown, Pa.

Defendants Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, The Washington Water Power Company, and Pennsylvania Power & Light Company, which defendants are hereinafter sometimes referred to collectively as "operating company defendants" but which are also holding companies as hereinafter set forth, are duly organized and existing corporations, the states in which they are incorporated and of which

they are citizens and residents and the locations of their respective principal offices for the transaction of business being:

Defendant	State of incorporation	Principal office
Appalachian Electric Power Company	Virginia	Roanoke, Va.
The Ohio Power Company	Ohio	Canton, Ohio.
The Scranton Electric Company	Pennsylvania	Scranton, Pa.
Atlantic City Electric Company	New Jersey	Atlantic City, N. J.
Idaho Power Company	Maine	Boise, Idaho.
Utah Power & Light Company	Maine	Salt Lake City, Utah.
United Gas Public Service Company	Delaware	Houston, Texas.
Houston Gulf Gas Company	Delaware	Houston, Texas.
The Montana Power Company	New Jersey	Butte, Mont.
Nebraska Power Company	Maine	Omaha, Neb.
Pacific Power & Light Company	Maine	Portland, Ore.
The Washington Water Power Company	Washington	Spokane, Wash.
Pennsylvania Power & Light Company	Pennsylvania	Allentown, Pa.

130 25. The plaintiff Securities and Exchange Commission is an independent agency in the executive branch of the Government of the United States with its principal office and domicile in the District of Columbia. The cross-defendants (made parties hereto by order of this Court) are administrative officers of the United States and are inhabitants of the District of Columbia. They are more particularly identified as follows: Homer S. Cummings (hereinafter referred to as the "Attorney General") is Attorney General of the United States; James A. Farley (hereinafter referred to as the "Postmaster General") is the Postmaster General of the United States; James M. Landis, Robert E. Healy, George C. Mathews, and James D. Ross (hereinafter referred to collectively as the "Commissioners") are members of and constitute the Securities and Exchange Commission.

The plaintiff and the cross-defendants threaten to perform certain acts, and to subject defendants to certain prohibitions, liabilities, and penalties, under the pretended authority of Title I of that certain Act of Congress (Public, No. 333—74th Congress—S. 2796; Title 15, Sections 79 to 79z–6, both inclusive, U. S. C. A.), entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes", approved August 26, 1935, which Title I in Section 33 thereof is designated "Public Utility Holding Company Act of 1935" and for brevity may be sometimes hereinafter referred to as the "Holding Company Act", or simply as the "Act." For reasons hereinafter set forth, the threatened acts of the plaintiff and the cross-defendants are not authorized, and said Act is unconstitutional and void. The plaintiff and the cross-defendants are, therefore, wholly without authority to do those things with which they are charged herein. There has thus arisen between the plaintiff and the defendants and between the defendants and the cross-defendants an actual controversy in which the plaintiff and the cross-defendants assert and propose to exercise, and the defendants deny, their authority to prohibit, control, regulate, or manage the business, affairs, or acts of the defendants under any of the provisions of said Holding Company Act.

26. This is a civil suit in equity, wherein the matter in controversy exceeds the sum of value of $3,000, exclusive
131 of interest and costs, arises under the Constitution and laws of the United States, and is within the equity jurisdiction of this Court. This is also a case of actual controversy involving civil and property rights of which this Court, pursuant to Section 274 (d) of the Judicial Code (Title 28, Section 400, U. S. C. A.) has jurisdiction to declare rights and other legal relations and the defendants are interested parties petitioning for such declaration and for such further relief by injunction or otherwise as may be necessary or proper.

27. Section 2(a) of Said Holding Company Act defines (in its numbered paragraphs hereinafter set forth) the following, among other, terms: (3) Electric utility company, (4) Gas utility company, (5) Public-utility company, (7) Holding company, (8) Subsidiary company, (9) Holding-company system, (10) Associate company, (11) Affiliate, (12) Registered holding company, (16) Security, (17) Voting security, (19) Service contract, (20) Sales contract, (21) Construction contract, (29) Integrated public-utility system. When such terms are hereinafter used, they are used in their statutory sense, as thus defined in said Section 2(a) of said Holding Company Act.

28. Defendant Bond and Share is a holding company, in that it owns ten per centum or more (the exact percentages being hereinafter stated in paragraph 39 and Exhibit VI hereof) of the outstanding voting securities of the following named defendants, each of which is likewise a holding company, to wit: American Gas, American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company. Defendant Bond and Share also owns approximately seven per centum of the outstanding voting securities of defendant United Gas Corporation, which is also a holding company.

Descriptions of each of said holding company defendants and of the subsidiary companies thereof and of the facts and circumstances which constitute each of said defendants herein a holding company are hereinafter set forth in paragraphs 32 to 36 hereof.

Defendant Bond and Share does not own, control, or hold with power to vote any voting securities of any of the holding company defendants or operating company defendants other than as above set forth.

132 Defendant Bond and Share's investment in the securities of the holding company defendants herein has exceeded, and now exceeds, the sum of $200,000,000. Defendant Bond and Share also owns bonds of operating public utility subsidiary companies of the holding company and operating company defendants which cost said defendant approximately $10,600,000 and which have a present value of approximately $11,700,000.

Defendant Bond and Share now has outstanding 1,155,655 shares of $6 Preferred Stock, 300,000 shares of $5 Preferred Stock and 5,267,147 shares of Common Stock held, in the aggregate, by approximately 130,000 stockholders who reside in every state in the United States and in many foreign countries. Each share of stock has one vote. More than a majority of said stockholders reside outside the State of New York, in which said defendant is incorporated. No stockholder owns more than 1.1 per centum of the presently outstanding stock of said defendant Bond and Share.

29. Defendant Bond and Share also owns more than ten per centum of the outstanding voting securities of American & Foreign Power Company Inc., which is a holding company, through its ownership of voting securities of certain holding companies and of certain public utility companies which operate solely in countries outside the boundaries of the United States.

Said defendant Bond and Share also has investments in the common stock and other securities of other public utility holding companies. These investments, while substantial in amount, are small in proportion to the aggregate voting stock of said companies and insufficient to constitute said defendant either a holding company or an affiliate of said companies as defined in said Holding Company Act, and said defendant has no service arrangement, common directors, or other affiliation with said companies except that of investment.

30. Defendant Bond and Share also owns all the outstanding capital stock of Ebasco Services Incorporated, a corporation organized under the laws of New York, which furnishes certain services, as more fully alleged in paragraph 38 hereof, to all or substantially all of the public utility companies which are subsidiary companies of the defendant holding companies above men-
133 tioned, other than defendant American Gas, to which company and its subsidiary companies no such services are furnished. Ebasco Services Incorporated in turn owns all or substantially all, of the outstanding capital stock of (a) Two Rector Street Corporation, a New York corporation which owns an office building at No. 2 Rector Street, New York, N. Y., (b) Emprezas Electricas Brasileiras, S. A., a corporation of the Republic of Brazil which renders certain services to public utility companies operating in Brazil which are indirect subsidiary companies of the above mentioned American & Foreign Power Company, Inc., and (c) Phoenix Engineering Corporation, a Delaware corporation which renders engineering services to certain of the public utility companies which are subsidiary companies of the holding company defendants.

31. By the terms of paragraph (9) of Section 2 (a) of said Holding Company Act, the defendant Bond and Share and the other holding company and operating company defendants and the subsidiary companies of said defendants, consisting principally of operating public utility companies, constitute a so-called holding com-

pany system, and each of the other defendants individually with its subsidiary holding and operating companies likewise constitutes a so-called holding company system. These companies, together with their interrelations and the principal business done by each of them, are described in the following paragraphs.

32. Defendant American Power & Light Company, hereinafter called "American Company", is a holding company in that it owns more than ten per centum (the respective percentages being indicated after the name of each company) of the outstanding voting securities of the following defendants and of the following electric and gas utility companies which are conducting and for several years last past have conducted electric and/or gas utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

Central Arizona Light and Power Company (98.04%) generates and distributes electric energy, and distributes natural gas, solely in Arizona. Florida Power & Light Company (100%) generates and distributes electric energy and gas solely in Florida. Kansas Gas and Electric Company (90.55%) generates and distributes
134 electric energy solely in Kansas, except for the distribution of electric energy to a few customers in Missouri. Minnesota Power & Light Company (93.03%) generates and distributes electric energy in Minnesota and also makes certain sales of electric energy at the Minnesota-Wisconsin boundary. Defendant The Montana Power Company (99.75%) generates and distributes electric energy and distributes natural gas in Montana and has a subsidiary company, Idaho Transmission Company, which distributes and delivers electric energy in Idaho and has an insignificant amount of property in Montana. Montana Power Gas Company (99.99%) produces and transmits natural gas solely in Montana. Defendant Nebraska Power Company (88.39%) generates and distributes electric energy in Nebraska, sells electric energy at or near the Iowa-Nebraska boundary and has a subsidiary company, Citizens Power & Light Company, which distributes in Iowa electric energy purchased in Nebraska and owns an insignificant amount of property in Nebraska. New Mexico Electric Service Company (99.99%) generates and distributes electric energy solely in New Mexico. Northern Power Company (98.80%) transmits and distributes in Wisconsin electric energy purchased at the Minnesota-Wisconsin boundary. Northwestern Electric Company (67.63%) generates and distributes electric energy in Oregon and Washington. Defendant Pacific Power & Light Company (94.66%) generates and distributes electric energy in Washington and Oregon and has a subsidiary company, Inland Power & Light Company, which generates and distributes electric energy in Washington and generates electric energy in Oregon. Portland Gas & Coke Company (84.03%) manufactures and distributes gas solely in Oregon, except for comparatively small distribution of such gas in Washington. Superior Water, Light and Power Company (66.56%) distributes electric energy and gas in Wisconsin.

Texas Electric Service Company (98.96%) generates and distributes electric energy solely in Texas. Texas Power & Light Company (96.76%) generates and distributes electric energy solely in Texas. Texas Public Utilities Corporation (99.95%) distributes electric energy and sells natural gas at wholesale solely in Texas. Defendant The Washington Water Power Company (99.68%) generates and distributes electric energy in Washington and Idaho and has a
135 subsidiary company, Chelan Electric Company, which generates electric energy in Washington and Idaho.

Defendants The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, and The Washington Water Power Company are holding companies in that they own all or substantially all of the voting securities of the companies above designated as their respective subsidiary companies.

None of the electric properties of the companies mentioned in this paragraph 32 is physically interconnected or is capable of physical interconnection with the properties of the other companies mentioned in this paragraph 32 into an "integrated public-utility system", as defined in Section 2 (a) (29) of the Act, which under normal conditions may be economically operated as a single interconnected and coordinated system, except that:

(a) The properties of defendants The Washington Water Power Company and The Montana Power Company, most of the properties of Pacific Power & Light Company and the properties of Northwestern Electric Company, Inland Power & Light Company, Idaho Transmission Company, and Chelan Electric Company are interconnected by means of transmission lines.

(b) The properties of Minnesota Power & Light Company, Northern Power Company, and Superior Water, Light and Power Company, are interconnected by means of transmisison lines.

(c) The properties of defendant Nebraska Power Company and its subsidiary company, Citizens Power & Light Company, are interconnected by means of distribution lines.

(d) Most of the properties of Texas Electric Service Company, Texas Power & Light Company and Texas Public Utilities Corporation, are interconnected by means of transmission lines.

A further description of said subsidiary companies of defendant American Company, and of other and non-utility direct and indirect subsidiary companies of said American Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting or selling electric energy or gas across state boundaries is given in Exhibit I, attached hereto and by reference made a part thereof.

136 33. Defendant Electric Power & Light Corporation, hereinafter called "Electric Company", is a holding company in that it owns more than ten per centum (the respective percentages being indicated after the name of each company) of the outstanding voting securities of the following defendant and of the following electric and gas utility companies which are conducting and for several years

last past have conducted electric and/or gas utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

Arkansas Power & Light Company (90.22%) generates and distributes electric energy and distributes natural gas in Arkansas and both sells and purchases electric energy at state boundaries. Dallas Power & Light Company (69.98%) generates and distributes electric energy solely in Texas. Louisiana Power & Light Company (95.43%) generates and distributes electric energy and distributes natural gas in Louisiana and sells electric energy at state boundaries. Mississippi Power & Light Company (94.03%) generates and distributes electric energy and distributes natural gas in Mississippi and purchases electric energy at state boundaries. New Orleans Public Service, Inc., (95.08%) generates and distributes electric energy and distributes natural gas (in emergencies manufactured gas) solely in Louisiana. Defendant Utah Power & Light Company (92.38%) generates and distributes electric energy in Utah, Idaho and Wyoming and is itself a holding company in that it owns all or substantially all of the outstanding voting securities of: (a) Utah Light and Traction Company, which owns but has leased to defendant Utah Power & Light Company electric generating plants and distributing systems in Utah; (b) The Western Colorado Power Company, which generates and distributes electric energy in Colorado; and (c) Bountiful Light and Power Company, which distributes electric energy in Utah.

Defendant Electric Company also owns all the outstanding voting securities of holding company defendant Power Securities Corporation, which is a holding company in that it owns 71.75% of the outsanding voting securities of defendant Idaho Power Company, which generates and distributes electric energy in Idaho and Oregon.

Said defendant Idaho Power Company is also itself a holding
137 company in that it owns all or substantially all of the outstanding voting securities of its subsidiary company, Nevada Power Company, which distributes electric energy in Nevada.

Defendant Electric Company also owns 61.58% of the outstanding voting securities of defendant United Gas Corporation, referred to in paragraph 34 hereof.

None of the electric properties of the companies mentioned in this paragraph 33 is physically interconnected or is capable of physical interconnection with the properties of the other companies mentioned in this paragraph 33 into an "integrated public-utility system" which under normal conditions may be economically operated as a single interconnected and coordinated system except that:

(a) The properties of defendants Idaho Power Company and Utah Power & Light Company and the properties of Utah Light and Traction Company, Bountiful Light and Power Company, and Nevada Power Company are interconnected by means of transmission lines.

(b) The properties of Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service, Inc., are interconnected by eans of transmission lines in the case of the Arkansas, Louisiana, and Mississippi companies, and in the case of the New Orleans Public Service, Inc., by means of an emergency interconnection between the Louisiana company, and the New Orleans company at the New Orleans generating station of the latter company.

A further description of said direct and indirect subsidiary companies of defendant Electric Company, and of other and non-utility direct and indirect subsidiary companies of said Electric Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting or selling electric energy or gas across state boundaries is given in Exhibit H, attached hereto and by reference made a part hereof.

34. Defendant United Gas Corporation, hereinafter called "United Company", is a holding company in that it owns all of the outstanding voting securities of its principal subsidiary company, defendant United Gas Public Service Company, which is engaged
138 in the production of natural gas and oil and is a gas utility company engaged as such in the distribution of natural gas in Texas, Louisiana, and Mississippi and also has natural gas pipe lines which extend into Alabama and Florida.

Defendant United Gas Public Service Company is itself a holding company in that it owns all or substantially all of the outstanding voting securities of: (a) defendant Houston Gulf Gas Company, which is engaged in the production of natural gas and oil, is a gas utility company engaged as such in the distribution of natural gas in Texas and also is itself a holding company in that it owns all or substantially all of the outstanding voting securities of Houston Gas and Fuel Company, which distributes natural gas in Houston, Texas; (b) Northern Texas Utilities Company, which operates natural gas production and distribution facilities in Texas; and (c) Southern Gas Utilities, Inc., which operates natural gas production and distribution facilities in Texas.

Defendant United Company also owns substantial stock interests in Mississippi River Fuel Corporation, operating in Louisiana, Arkansas, Missouri, and Illinois, and El Paso Natural Gas Company, which, with its subsidiary companies, operates in New Mexico, Texas, Arizona, and the Republic of Mexico. Defendant United Gas Public Service Company also owns substantial stock interests in Monroe Gas Company and Natural Gas Company, Inc., operating in Louisiana. None of these four companies is operated as a part, or considered to be a part, of the natural gas system of said United Gas Public Service Company.

The natural gas properties of defendant United Gas Public Service Company and its several subsidiary companies above named comprise a single system for the production, transportation, and distribution of gas, such system being fully interconnected either through

transportation facilities of defendant United Gas Public Service Company and its subsidiary companies (or through transportation facilities belonging to other natural gas companies which have contracted to transport gas produced by said United Gas Public Service Company or its subsidiary companies), except in the case of a portion of said system in the Amarillo field in northern Texas
139 which is not yet physically interconnected, but which is capable of physical interconnection, with the remainder of said system.

A further description of said direct and indirect subsidiary companies of defendant United Company, and of other and non utility direct and indirect subsidiary companies of said United Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transporting or selling gas across state or international boundaries is given in Exhibit III, attached hereto and by reference made a part hereof.

35. Defendant National Power & Light Company, hereinafter called "National Company", is a holding company in that it owns more than ten per centum (the respective percentages being indicated after the name of each company) of the outstanding voting securities of the following electric and gas utility companies which are conducting and for several years last past have conducted electric and/or gas utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

Birmingham Electric Company (100%) distributes and, in emergencies, generates electric energy solely in Alabama. Carolina Power & Light Company (93.53%) generates and distributes electric energy in North Carolina and South Carolina and both purchases and sells electric energy at state boundaries. Holston River Electric Company (100%) distributes electric energy solely in Tennessee. Houston Lighting & Power Company (91.32%) generates and distributes electric energy solely in Texas. Memphis Power & Light Company (86.79%) generates and distributes electric energy and distributes natural gas (in emergencies manufactured gas) in the State of Tennessee and also both sells and purchases small amounts of electric energy at state boundaries. Roanoke River Power Company (100%) owns an undeveloped hydro-electric site and adjacent lands in Virginia and North Carolina and transmits certain electric energy through Virginia for delivery to the above named Carolina Power & Light Company. Tennessee Public Service Company (99.31%) generates and distributes electricity in the State of Tennessee and purchases electric energy at the Tennessee-North Carolina boundary. West Tennessee Power & Light Company (99.99%) generates and distributes electric energy and
140 distributes natural gas (in emergencies manufactured gas) solely in Tennessee.

Defendant National Company also owns 99.66% of the outstanding voting securities of holding company defendant Lehigh Power

Securities Corporation, hereinafter called "Lehigh Company", which has as subsidiary companies: (a) defendant Pennsylvania Power & Light Company, which generates and distributes electric energy, manufactures and distributes manufactured gas and distributes natural gas in Pennsylvania, effects certain interchanges of electric energy which may or does cross state boundaries and in turn has as subsidiary companies: Lehighton Electric Light and Power Company, which distributes electric energy in Pennsylvania; Stanton Operating Company, which operates an electric generating plant in Pennsylvania, and Conestoga Transmission Company, which owns but has leased to defendant Pennsylvania Power & Light Company an electric transmission line in Pennsylvania; (b) Lehigh Valley Transit Company, which has filed a petition for reorganization under Section 77B of the Bankruptcy Act and is not a defendant herein, but which has a subsidiary company, defendant Easton Consolidated Electric Company, which in turn has a subsidiary company, The Edison Illuminating Company of Easton. Defendants Lehigh Company, Pennsylvania Power & Light Company, and Easton Consolidated Electric Company are holding companies in that they each own more than 10 per centum of the voting securities of the companies above designated as their respective subsidiary companies.

None of the electric properties of the companies mentioned in this paragraph 35 is physically interconnected or is capable of physical interconnection with the properties of the other companies mentioned in this paragraph 35 into an "integrated public-utility system" which under normal conditions may be economically operated as a single interconnected and coordinated system, except that:

(a) Substantially all of the properties of defendant Pennsylvania Power & Light Company and its electric utility subsidiary companies and of Lehigh Valley Transit Company are interconnected by means of transmission lines.

(b) The properties of Carolina Power & Light Company, Tennessee Public Service Company, Holston River Electric
141 Company and Roanoke River Power Company are interconnected (in part by means of transmission lines owned by other interests which have contracted to transmit electric energy for delivery to Carolina Power & Light Company) by means of transmission lines.

(c) The properties of Memphis Power & Light Company and West Tennessee Power & Light Company are interconnected by means of transmission lines.

A further description of said direct and indirect subsidiary companies of defendant National Company and of other and non-utility direct and indirect subsidiary companies of said National Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting or selling electric energy across state boundaries is given in Exhibit IV attached hereto and by reference made a part hereof.

In addition to the companies named in said Exhibit IV, defendant National Company also owns approximately 17% of the outstanding voting securities of Memphis Natural Gas Company, a natural gas pipe line company which transmits gas from Louisiana Through Arkansas and Mississippi into Tennessee. The latter company is a controlled subsidiary company of another corporation in no way related to defendant National Company or its subsidiary companies.

36. Defendant American Gas is a holding company in that it owns all or substantially all of the outstanding voting securities of the following defendants and of the following electric utility companies which are conducting and for several years last past have conducted electric utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

Defendant Appalachian Electric Power Company generates and distributes electric energy in Virginia and West Virginia, sells electric energy at wholesale in Tennessee and has subsidiary companies: Kentucky and West Virginia Power Company, Inc., which generates and distributes electric energy solely in Kentucky and Kingsport Utilities, Incorporated, which distributes electric energy solely in Tennessee. Defendant Atlantic City Electric Company generates and distributes electric energy solely in New Jersey and has a subsidiary company, Deepwater Operating Company, which op-

142 erates an electric generating plant in New Jersey. Defendant The Ohio Power Company generates electric energy in Ohio and West Virginia, distributes electric energy solely in Ohio and has a subsidiary company, Beech Bottom Power Company, Inc., which operates an electric generating plant in West Virginia. Defendant The Scranton Electric Company generates and distributes electric energy solely in Pennsylvania and has a subsidiary company, Stanton Operating Company, which operates an electric generating plant in Pennsylvania. Indiana General Service Company generates and distributes electric energy solely in Indiana. Indiana & Michigan Electric Company generates and distributes electric energy in Indiana and Michigan. Kanawha Valley Power Company operates electric generating plants in West Virginia and sells the entire output of electric energy from such plants to defendant Appalachian Electric Power Company. Southern Ohio Public Service Company operates an electric generating plant in Ohio and sells the entire output of electric energy from such plant to defendant The Ohio Power Company. Wheeling Electric Company generates electric energy in West Virginia and distributes electric energy in West Virginia and Ohio.

Defendant Appalachian Electric Power Company is a holding company in that it owns all or substantially all of the voting securities of the companies above designated as its subsidiary companies. Defendants The Ohio Power Company, The Scranton Electric Company and Atlantic City Electric Company are holding companies in

that they each own 50 per centum of the voting securities of the companies above designated as their respective subsidiary companies.

The properties of all the companies mentioned in this paragraph 36 except those of defendant The Scranton Electric Company and defendant Atlantic City Electric Company are interconnected by means of transmission lines.

A further description of said subsidiary companies of the defendant American Gas and of other and non-utility direct or indirect subsidiary companies of said American Gas, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting electric energy across state boundaries is given in Exhibit V, attached hereto and by reference made a part hereof.

143 37. The investments of the holding company defendants in the securities of their subsidiary companies have amounted to, and now amount to, many millions of dollars.

The respective investments of the holding company defendants are, in each case, in common stock and in certain cases are also in bonds, notes, debentures or preferred stocks. The respective investments of the operating company defendants, in their own properties and/or in the securities of their respective subsidiary companies amount (in addition to investments represented by securities held by the holding company defendants) in each case to millions of dollars represented by bonds, stocks, and other securities held by the public. Such securities so held by the public are widely distributed in the states in which said subsidiary companies respectively operate and in other states in the United States and in some instances in foreign countries.

38. Heretofore and for many years defendant Bond and Share maintained for the benefit of all or substantially all of the public utility operating subsidiary companies of the holding company defendants (other than those of defendant American Gas), a service organization which rendered advice and counsel on operating and financial problems, technical assistance in engineering, accounting rate-making commercial and other matters, secretarial and fiscal services, which could be most advantageously conducted by a central organization. Said organization was maintained by defendant Bond and Share at its offices in New York City, and said defendant Bond and Share was compensated for said services by a fee based primarily on a percentage of operating revenues of the companies served.

Subsequent to the passage of said Holding Company Act and prior to the filing of the original Bill of Complaint herein, defendant Bond and Share transferred said service organization and assigned the contracts for such services (but not the contracts for services to the holding company defendants which were cancelled as alleged in paragraph 10 of the Answer) to its wholly-owned subsidiary company referred to in paragraph 30 hereof, to-wit, Ebasco Services, Incorporated, which has qualified to do business in the various states

in which the public utility operating subsidiary companies served by it conduct substantial operations.

144 Said Ebasco Services, Incorporated, is now rendering and proposes to continue to render the services above set forth to the operating public utility subsidiary companies of the holding company defendants other than defendant American Gas. None of said services above described constitutes interstate commerce, but in the performance of said services the mails and facilities of commerce are used. Also Ebasco Services, Incorporated, acting for its operating company clients for the purpose of placing orders in the names of said companies and not for itself or in its own behalf, negotiates contracts for the purchase of materials and supplies by such client operating public utility companies. In the rendition of these purchasing services, subsidiary companies of defendant American Gas have been, but no longer are, permitted to make purchases, and receive the benefits arising, under certain, but not all, of these contracts. Such purchases by said client operating companies include the purchase of materials and supplies which move directly in interstate commerce from the manufacturer or wholesaler to such operating companies and Ebasco Services, Incorporated, arranges for the shipment or transportation of a part of such materials and supplies. In the performance of services rendered by said Ebasco Services, Incorporated, there are employed approximately 350 individuals of whom only approximately ten are employed in the Purchasing Department thereof, and while the volume of purchases by client companies is large, the purchasing service rendered by said Ebasco Services, Incorporated, is a minor and serverable part of the total services performed by it.

Included among the operating public utility companies to which defendant Bond and Share rendered, and to which Ebasco Services, Incorporated, now renders, services as aforesaid, are all or substantially all of those named above (other than the subsidiary companies of defendant American Gas), including those which operate in countries entirely without the boundaries of the United States, those which operate entirely within a single state of the United States, and those which operate in more than one state and in the operations of which electric energy and gas are transmitted across state boundaries. For the services rendered to such operating public utility companies, service fees have been and are charged, based upon the oper-

145 ating revenues of the companies served, and said fees, which amount on the present basis to approximately 1.1 per centum of the aggregate operating revenues of such public utility companies operating in the United States, have yielded and may yield on such basis an aggregate amount in excess of the cost of rendering such services. Such fees may enter into the rates locally charged within the several states for public utility services rendered by such companies, and are subject to the jurisdiction of the proper state authorities in the several states. Said fees are not based upon and have no

relation to the generation or transmission of electric energy or gas, whether across state boundaries or otherwise.

39. Briefly, the intercorporate relations and the system of operations of defendant Bond and Share and the holding company defendants are as follows:

Defendant Bond and Share in its own corporate capacity owns the following percentages of the voting securities of the holding company defendants, to wit: defendant American Company 20.70 per centum, defendant Electric Company 47.20 per centum, defendant National Company 46.56 per centum, defendant American Gas 17.51 per centum, defendant United Company 7 per centum, defendant Power Securities Corporation none, defendant Lehigh Company none and defendant Easton Consolidated Electric Company none, and has such degree of influence and control over said companies as is inherent in such stock ownership. Such influence and control is exercised by voting the stock owned by defendant Bond and Share, and not by common officers, directors, or employees, or direct participation in management, of such other defendants. A statement of the capitalization of said holding company defendants and the voting stock ownership therein of defendant Bond and Share is set forth in Exhibit VI, attached hereto and by reference made a part hereof. Defendant Bond and Share is not a public utility company. It is not engaged in commerce with foreign nations or among the several states in the sale of electric energy or gas, or otherwise. Although defendant Bond and Share uses the mails and other facilities of commerce as an incident to its business, its sole corporate
146 business (since the transfer of its service organization as stated in paragraph 38 hereof) is the ownership of securities in the above mentioned companies and the ownership of its other investments and the conduct of matters incidental thereto, such as the occasional lending of money, the receipt and disbursement of interest and dividend payments, and the like.

There are no directors, officers or employees common to the defendant Bond and Share or said Ebasco Services, Incorporated, and the other defendants or their subsidiary companies, except as follows: the Chairman of the Board of Directors of the defendant Bond and Share is Chairman of the Board of Directors of defendant American Gas, and one other individual, is a director of both said companies and a vice-president of defendant Bond and Share.

Of the holding company defendants above mentioned, American Company, Electric Company, National Company, United Company, Power Securities Corporation, and Lehigh Company do no other business and perform no other function than that of companies holding for investment the common stock and other securities of their subsidiary companies above described, voting such stock for the election of directors and such other corporate purposes as require stockholders vote, the occasional lending of money or lending of credit to said operating companies, collecting interest and dividends and paying same out to their creditors and stockholders. None of

them is a public utility company and none of them is engaged in commerce with foreign nations or among the several states in the sale of electric energy or gas, or otherwise. They use the mails or other facilities of commerce only incidentally in furtherance of such business. They exercise voting control through stock ownership of their subsidiary operating companies, which are separately officered, staffed, directed and financed. The operating companies subsidiary to said holding companies are engaged primarily in the business of distributing electricity or gas to the public at retail under franchises or other authority of the states in which they operate. None of the officers, directors or employees of any of the subsidiary companies of the foregoing holding company defendants is an officer, director, or employee of said holding company defendants and the operations of each of said subsidiary companies are conducted entirely
147 separately, and are distinct, from the operations of said holding company defendants. Defendant Easton Consolidated Electric Company is primarily a holding company with respect to the securities of transportation companies, but also holds the securities of The Edison Illuminating Company of Easton, which owns, but does not operate, an electric distribution property as described in Exhibit IV. Said defendant's business is generally similar to that of the holding company defendants above described. It transacts no business whatever in interstate commerce.

Defendant American Gas, in addition to owning the stocks of the companies hereinabove named as its subsidiary companies and exercising voting control of said companies, furnishes, through use of its own personnel, to its subsidiary operating utility companies managerial, financial, accounting, auditing, commercial, purchasing, valuation, engineering, insurance, statistical, and other services. Various officers and directors of defendant American Gas also act as officers and directors of its public utility subsidiary companies, performing for such subsidiary companies the duties of the offices held and supplementing the local operating organizations of such subsidiary companies, which organizations are separate and distinct from those of defendant American Gas. Defendant American Gas is not a public utility company. It is not engaged in commerce with foreign nations or among the several states in the sale of electric energy or gas, or otherwise.

In addition to stock ownership in the public utility companies referred to in paragraphs 32 to 36, the holding company defendants and the operating company defendants, as well as certain of their subsidiary companies, own common stock, and, in some cases, other securities of subsidiaries which are not public utility companies as defined in said Holding Company Act.

40. As fully set forth in said Exhibits I, II, III, IV, and V the public utility companies therein and hereinabove described are, with few and unimportant exceptions, engaged primarily in the generation and distribution of electric energy, or the production and dis-

tribution of gas, within the states in which they respectively operate.

148 The generation of such electric energy or the production of such gas and the distribution thereof to the public within the several states is not and does not directly affect commerce between the states and is wholly within the jurisdiction and control of the states and the regulatory authorities thereof, within which such energy or gas is generated, produced, or distributed. Such companies as transmit electric energy or gas across state boundaries do so ordinarily and primarily for distribution at retail to customers of such companies within the states to which such energy or gas is transmitted. Such transmission of electric energy or gas across state boundaries does not constitute a sale or sales in interstates commerce and is only subject to Federal jurisdiction and regulation to the extent, if any, that such transmission across state boundaries impairs or tends to impair the safety, health, or morals of any person. Sales of electric energy or gas across state boundaries are a minor part of the business done by said public utility companies, and in practically every case a minor part of the business done by the particular company making such sales, and comprise a business which is severable from said companies' intrastate business. Said companies are doing a predominantly intrastate business within the states in which they operate subject to the jurisdiction of such states and of the regulatory authorities thereof and not to Federal jurisdiction.

41. None of the defendants has been exempted, or, under the terms of said Act, is entitled to apply for exemption from any provision of said Act under Section 3 or any other provision thereof providing for the exemption of holding companies except that the following defendants, to wit: (a) The Washington Water Power Company in the American Company group; (b) Pennsylvania Power & Light Company and Easton Consolidated Electric Company in the National Company group; and (c) Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, and Atlantic City Electric Company, in the American Gas group, are temporarily exempted as holding companies from the provisions of the Act under the terms of a rule of the plaintiff set forth in Exhibit A attached to the Bill herein, but said defendants have no means of knowing whether said exemption will continue after February 2, 1936. Further, said exemption exists and will

149 continue in the sole discretion of the plaintiff, all without judicial review, except upon issues of law, decisions of the Commission as to fact being conclusive if supported by substantial evidence.

All of the holding company defendants and the remaining companies mentioned in paragraphs 32 to 36 hereof are subsidiary companies of the defendant Bond and Share and of their respective holding companies within the meaning of Section 2 (a) (8) of said Holding Company Act and none of said companies is entitled to

exemption or to claim exemption as a subsidiary company under the terms of Sections 2 (a) (8) and 3 (b) of said Act, or otherwise, or any other section thereof. Exemption of said holding and operating company defendants as holding companies would be comparatively valueless to them as they would remain subsidiary companies subject to all, or practically all, the provisions of said Act.

42. In the course of their business, defendant Bond and Share and its subsidiary service company, Ebasco Services Incorporated, and the holding company and operating company defendants use the United States mails and the facilities of commerce for various lawful purposes, including the transportation of their officers and employees and the transmission of lawful matter affecting the business of said companies and not in any way tending to impair the safety, health, or morals of any person; said matter does not endanger the mails or the facilities of transmission thereof or the facilities of commerce, nor is such matter calculated to, nor does it, defraud or otherwise injure or offend the sender or recipient thereof, or any other person or corporation, directly or indirectly.

43. Section 4 (a) of said Holding Company Act provides that after December 1, 1935, unless a holding company is registered under Section 5 of said Act, it shall be unlawful for such holding company, directly or indirectly—

"(1) to sell, transport, transmit, or distribute, or own, or operate any utility assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce;

(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company, or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

(5) to engage in any business in interstate commerce; or

(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5), inclusive, of this subsection."

The activities forbidden by paragraphs (3), (4), and (6) of said Section 4 (a) are essential to the normal and ordinary conduct of the business of each of the defendants and the use, conservation, and development of its properties. It is essential and necessary that each of the defendants, to maintain the integrity of its property and investments, own, control, and hold with power to vote, the securities of its subsidiary companies which do the things prohibited in paragraphs (1) to (5), inclusive, of said Section 4 (a) as and to the extent hereinbefore alleged.

It is necessary for defendants, Appalachian Electric Power Company, The Ohio Power Company, Utah Power & Light Company, Idaho Power Company, Pacific Power & Light Company, and The Washington Water Power Company, themselves to transmit electric energy across state boundaries for distribution in states in which they operate, as hereinbefore averred.

It is necessary for defendants, The Montana Power Company, Nebraska Power Company, and Pennsylvania Power & Light Company, themselves to maintain and operate transmission lines
151 to points at or near state boundaries, as hereinbefore set forth, where electric energy is sold to, interchanged with, or purchased from, subsidiary companies or non-associate electric utility companies.

It is necessary for defendant United Gas Public Service Company to transport natural gas across state boundaries for distribution in states in which it operates, as hereinbefore averred.

It is necessary for defendant American Gas to use the mails and facilities of interstate commerce to perform the services which it renders to its subsidiary companies, as alleged in paragraph 39 hereof.

Section 4 (b) of said Act provides as follows:

"(b) Every holding company which has outstanding any security any of which, by use of the mails or any means or instrumentality of interstate commerce, has been distributed or made the subject of a public offering subsequent to January 1, 1925, and any of which security is owned or held on October 1, 1935 (or, if such company is not a holding company on that date, on the date such company becomes a holding company), by persons not resident in the State in which such holding company is organized, shall register under Section 5 on or before December 1, 1935, or the thirtieth day after such company becomes a holding company, whichever date is later."

Said Section 4 (b) is applicable to each of the defendants, except defendant Easton Consolidated Electric Company, since such defendants have distributed and made the subject of public offering substantial amounts of their respective securities by use of the mails or means or instrumentalities of interstate commerce subsequent to January 1, 1925, and substantial amounts of said securities were owned or held on October 1, 1935, and are so owned or held on the date hereof by persons not resident in the respective states in which such defendants are respectively organized. By reason of the facts

in this paragraph recited such defendants are directed by the terms of said Section 4 (b) to register under Section 5 of said Act on or before December 1, 1935, even though they do not now engage, and may not in the future engage, in any commerce with foreign countries or among the several states.

An unregistered holding company which engages in any of the transaction prohibited by Section 4 (a) is within the purview of the following provisions of Section 26 (b):

152 "(b) Every contract made in violation of any provision of this title or of any rule, regulation, or order thereunder, and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, regulation, or order."

Each of the defendants has existing many contracts, relationships, and practices, the performance of which involve violations of provisions of said Act, and which may also be subjected to rules, regulations or orders of plaintiff Commission which would likewise be violated. Among such contracts and relationships are those between defendant Bond and Share's wholly-owned subsidiary, Ebasco, Services Incorporated, and others of the defendants and their subsidiaries for the performance of services, and like arrangements between defendant American Gas and its subsidiaries. Such contracts and relationships are of value to the parties thereto, and their termination would result in monetary losses, and losses in economy and efficiency of operation.

An unregistered holding company and its officers and employees are also within the purview of the following penalty provisions of Section 29:

"Any person who wilfully violates any provision of this title or any rule, regulation, or order thereunder (other than an order of the Commission under subsection (b), (d), (e), or (f) of section 11), * * * shall upon conviction be fined not more than $10,000 or imprisoned not more than two years, or both, except that in the case of a violation of a provision of subsection (a) or (b) of section 4 by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding $200,000;

153 but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no knowledge of such rule, regulation, or order."

Each of the defendants' officers and employees are engaged in the discharge of duties and in the performance of contracts which may

subject them to the fines and imprisonment prescribed in said section. the acts required of them in the normal discharge of their duties, subject to the penalties of said section, are many, numerous and continuous; the penalties of fines and imprisonment for successive and different acts are, or may be contended to be, cumulative, as a result of which the officers and employees of each of the defendants are presently threatened with liability of fine and imprisonment for the discharge of their normal duties, performance of company contracts, and the normal conduct of the business operations of the respective defendants; such threat or liability of fine and imprisonment has a deterring and demoralizing effect upon the personnel of the defendants, and, unless relief is granted therefrom by decree in this cause, constitutes an irreparable injury to the defendants and their properties and business.

44. Section 5 (a) of said Holding Company Act provides that on or at any time after October 1, 1935, any holding company may register by filing with the plaintiff Securities and Exchange Commission a notification of registration, in such form as said Commission may by rules and regulations prescribe, and such holding company shall be deemed to be registered upon receipt by said Commission of such notification of registration. Section 5 (b) of said Act provides that it shall be the duty of every registered holding company to file with the said Commission, within such reasonable time after registration as said Commission shall fix, a registration statement in such form as the said Commission shall prescribe, and that such registration statement shall include:

"(1) such copies of the charter or articles of incorporation, partnership, or agreement, with all amendments thereto, and the bylaws, trust indentures, mortgages, underwriting arrangements, voting-trust agreements, and similar documents, by whatever name known, of or relating to the registrant or any of its associate companies as
154 the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers;

(2) such information in such form and in such detail relating to, and copies of such documents of or relating to, the registrant and its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

(A) the organization and financial structure of such companies and the nature of their business;

(B) the terms, position, rights, and privileges of the different classes of their securities outstanding;

(C) the terms and underwriting arrangements under which their securities, during not more than the five preceding years, have been offered to the public or otherwise disposed of and the relations of underwriters to, and their interest in, such companies;

(D) the directors and officers of such companies, their remuneration, their interest in the securities of, their material contracts with, and their borrowings from, any of such companies;

(E) bonus and profit-sharing arrangements;

(F) material contracts, not made in the ordinary course of business, and service, sales, and construction contracts;

(G) options in respect of securities;

(H) balance sheets for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(I) profit and loss statements for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(3) such further information or documents regarding the registrant or its associate companies of the relations between them as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers."

Section 5 (c) of said Act provides that the Commission may permit a registrant to file a preliminary registration statement without
155 complying with the provisions of Section 5 (b), but that every registrant shall file a complete registration statement with the said Commission within such reasonable period of time as the Commission shall fix, but not later than one year after the date of registration.

45. In order to comply with the above described provisions of Section 5 of said Holding Company Act, it would be necessary for each of the defendants to expend very substantial sums of money to comply with the provisions of the Act with respect to registration. In order to accomplish complete registration in compliance with the foregoing statutory requirements, the defendant Bond and Share itself would be required to expend not less than $50,000; the defendant American Gas and its subsidiary companies, the operating company defendants Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, and Atlantic City Electric Company, would be required to expend in the aggregate not less than $60,000; the defendant American Company and its subsidiary companies, the operating company defendants The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, and The Washington Water Power Company, would be required to expend in the aggregate not less than $85,000; the defendant Electric Company and its subsidiary companies, the holding company defendants Power Securities Corporation and United Gas Corporation and the operating company defendants Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, and Houston Gulf Gas Company, would be required to expend in the aggregate not less than $60,000; the defendant National Company and its subsidiary companies, the hold-

ing company defendants Lehigh Company and Easton Consolidated Electric Company and the operating company defendant Pennsylvania Power & Light Company would be required to expend in the aggregate not less than $70,000.

46. By the terms and provisions of said Holding Company Act, each of the defendants, or any other holding company as therein defined, upon registration loses the status of a non-registered holding company and subjects itself to the jurisdiction of plaintiff Securities and Exchange Commission. Said Act attempts to make registration not merely a means for getting information, but
156 the acceptance of a license under which each of the defendants, or any holding company, is permitted to do those things prohibited by Section 4 (a) but necessary for the conduct of its ordinary business operations, only upon the terms and conditions prescribed by subsequent paragraphs of the Act, as hereinafter alleged, and generally at the will and discretion of said Commission and not as of right. The whole mechanism of the control of the operations of the defendants by plaintiff Securities and Exchange Commission is based, by the provisions of said Act, upon registration thereunder.

Immediately upon said registration and in consequence thereof, it will be and become unlawful by the terms of said Holding Company Act for any of the defendants, without the prior approval of plaintiff Securities and Exchange Commission, or in contravention of any rule, regulation or order from time to time by it deemed necessary or appropriate: (1) to issue or sell any long term security (which is defined in Sec. 2 (a) (16) to include any note, draft, stock, bond, debenture, receiver's or trustee's certificate or certificate of deposit for a security) of any such company (Sec. 6 (a)); (2) to exercise any privilege or right to alter the priority, preference, voting power or other right of the holders of any outstanding security of such company (Sec. 6 (a)); (3) to acquire, directly or indirectly, any securities or utility assets or any other interest in any business (Sec. 9 (a) (1); (4) to lend or extend its credit to or indemnify any company in the same holding company system (Sec. 12(b)); (5) to declare or pay any dividend on any security of such company or to acquire, retire or redeem any security of such company (Sec. 12 (c)); (6) to sell any security which such company owns of any public utility company or any utility asset (Sec. 12. (d)); (7) to solicit any proxy, power of attorney, consent or authorization regarding any security of such company or a subsidiary company thereof (Sec. 12 (e)); (8) to negotiate, enter into or take any step in the performance of any transaction not otherwise unlawful under said Act with any company in the same holding company system or with any affiliate of a company in such holding company system (Sec. 12 (f); or (9) to keep its accounts, correspondence, memoranda, papers, books, and other records Sec. 15 (a) and (e)).

157 Said Holding Company Act further provides, in Sec. 12(a), that it shall be unlawful for a registered holding company

to borrow money from any subsidiary company or from any public utility company in the same holding company system and, in Secs. 13 (a) and 13 (b), that, after April 1, 1936, it shall be unlawful for any registered holding company to take any step in the performance of any service, sales, or construction contract with any associate company which is a public utility company or a mutual service company, or for any subsidiary company of a registered holding company to take any step in the performance of any such contract with an associate company, except in accordance with such terms and conditions and subject to such limitations and prohibitions as plaintiff Commission shall prescribe.

Both in the matters hereinabove mentioned, and in the further provisions of the Act, particularly those of Sections 14 to 29, inclusive, under which plaintiff Commission is authorized to require registered holding companies to make various and sundry reports; to prescribe accounting systems; to make minute examinations of all correspondence, memoranda, papers, books, and records of registered holding companies and their subsidiary companies and affiliates; to investigate the business and financial condition and practices of registered holding companies and their subsidiary companies; to compel attendance of witnesses; to require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records which said Commission deems relevant and material, and to bring suits to enforce compliance with the provisions of the Act applicable to such registered holding companies, the entire business of each of the defendants would be subjected by registration to complete and virtually unlimited control of plaintiff Securities and Exchange Commission, and the actual management and direction of the business and property of defendants would be transferred from the duly authorized and responsible representatives of the owners thereof, to wit, the officers and directors of such companies, to said plaintiff Commission.

The judicial review provided for orders of said Commission by Section 24(a) of said Act is inadequate and incomplete, and is limited to review upon the law, as by the terms of said section "The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive."

158

47. Following such registration and in consequence thereof, it will be and become the duty of plaintiff Securities and Exchange Commission by the terms of Section 11 of said Act, as soon as practicable after January 1, 1938, to cause each of the defendants to take such action as said Commission shall find necessary to limit the operations of the holding company system, of which each such defendant would be then a part, to a "single integrated public-utility system", subject to a finding by said Commission of the existence of certain arbitrarily defined conditions which are not available to defendants Bond and Share, Electric Company, National Company, and American Company, since their respective operating util-

ity companies described in paragraphs 32, 33, 34, 35, and 36 hereof do not in any case comprise a "single integrated public-utility system" as defined in Section 2(a) (29) (meaning thereby one whose utility assets are physically interconnected or capable of physical interconnection) but consist of many such systems. By the terms of said Section 11, said Commission will be required to cause the disintegration, dismemberment, or reorganization of each such defendant's so-called holding company system, so as to confine each such defendant's holdings to a single integrated public utility system, as provided in said Section 11.

Said Section 11 further provides,

"That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

"(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

"(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

"(C) The continued combination of such systems under the control of such holding company is not so large (considering the
159 state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation."

Of the subsidiary operating public utility companies of defendant American Gas, defendants Appalachian Electric Power Company and The Ohio Power Company, together with defendant American Gas' direct subsidiary companies, Indiana & Michigan Electric Company, Indiana General Service Company, Wheeling Electric Company, Southern Ohio Public Service Company and Kanawha Valley Power Company may constitute "a single integrated public-utility system" within the meaning of said Section 11 under the definition in Section 2(a) (29) of said Act of an "Integrated public-utility system" as:

"* * * a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation."

The utility properties of defendants The Scranton Electric Company and Atlantic City Electric Company are not as to each other,

nor as to the system above described, a single "Integrated public-utility system" within the definition in Section 2(a) (29), but are "additional integrated public-utility systems" within the meaning of Section 11.

As a result of the foregoing, defendant American Gas' right to retain its stock ownership of any of the above companies as part of its holding company system is dependent upon plaintiff Commission's findings under Section 11, which findings are factually conclusive, and subject to no judicial review, if supported by substantial evidence.

The defendant American Gas and its subsidiary companies have no present means of knowing whether and the extent to which plaintiff Commission may leave the defendant American Gas
160 in possession, ownership, or control of any of said public utility systems, as hereinabove described and particularly the systems of the The Scranton Electric Company and Atlantic City Electric Company. Such uncertainty will exist until at least January 1, 1938 and thereafter until said Commission, after a hearing may enter its order thereon.

The respective properties of the subsidiary public utility companies of the holding company defendants United Company, Power Securities Corporation, Lehigh Company, and Easton Consolidated Electric Company and of each of the operating company defendants themselves may constitute physically interconnected properties all as hereinbefore in paragraphs 32, 33, 34, 35, and 36 hereof alleged, within the meaning of Section 11 which submits to the jurisdiction of plaintiff Commission the conclusive determination of the factual questions embodied in the definition in Section 2(a) (29) of said Act. Such defendants have no present means of knowing whether and the extent to which said Commission will find that the respective properties operated by them and their subsidiary companies constitute integrated public utility systems. Such uncertainty will exist until at least January 1, 1938, and thereafter until said Commission, after a hearing, may enter its order thereon.

Section 11 of the Act further imposes upon plaintiff Commission the duty of taking such steps as it shall find necessary to insure that the corporate structure or continued existence of any company in the holding company system of each or any of the defendants or any of its subsidiary companies does not, in the opinion of said Commission, unduly or unnecessarily complicate the corporate structure, or unfairly or inequitably distribute the voting power among security holders, of such holding company system.

The provision of said Section 11 constitute the primary and basic objective of said Holding Company Act. Section 1 (c) thereof provides—

"* * * it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as

enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in
161 activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title."

The enforcement of said Section 11 and the effectuation of the policy set forth in Section 1 (c), as above quoted, will cause, arbitrarily by legislative fiat, and without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, the forced sale, or other form of disposal, and the consequent sacrifice of the values of defendant Bond and Share's assets, and of the respective assets of each of the holding company defendants Electric Company, National Company, and American Company and of said defendants' respective investments in the stock of the holding companies and public utility operating companies owned by them as hereinbefore described. All of the various provisions of said Act hereinabove set forth are framed with a view to the effectuation of the policy set forth in said Section 1 (c), to be accomplished through the mandatory provisions of said Section 11. Said sections, and the threatened enforcement thereof by the plaintiff Commission and by the cross-defendants, as hereinafter alleged, constitute an immediate and present irreparable damage and injury, and subject defendant Bond and Share and the holding company defendants Electric Company, National Company, and American Company to a present threat of dismemberment, dissolution, or reorganization, presently destroy their value as living going concerns, destroy their credit and the values of their securities and holdings, prevent their development through the making of such further investments in the securities of their subsidiary companies as are necessary to conserve and develop their business, threaten their organizations with disruption and destruction, and, if enforced, leave them with no alternative but to dissolve, go out of business, and sacrifice their investments for anything that they may bring.

162 Similarly, said sections of the Act and the threatened enforcement thereof by the plaintiff Commission and by the cross-defendants, as hereinafter alleged, also constitute an immediate, present, and irreparable damage and injury, and subject the holding company defendants American Gas, United Company, Power Securities Corporation, Lehigh Company, and Eastern Consolidated Electric Company and each of the operating company defendants to a present threat of possible dismemberment, dissolution, or reorganization; tend to depreciate or destroy their values as living going concerns; tend to depreciate or destroy their credit and the values of their securities and holdings; tend to alter or prevent their develop-

ment through the making of such further investments in the securities of their subsidiary companies as are necessary to conserve and develop their business; threaten their organizations with disruption or destruction, and, if enforced by declaring the holding company system of any of said defendants not to be a "single integrated public-utility system", leave each such defendant with no alternative but to reorganize its properties and business on such basis as said Commission may permit and to sacrifice the investments which it may be required to dispose of for anything that they may bring.

48. Said Holding Company Act is not in truth and in fact a law; but said pretended statute is void and unconstitutional and of no force and effect for the following among other reasons, to-wit:

(1) None of the provisions of said Holding Company Act, in its application to the defendants constitutes regulation of either interstate or foreign commerce within Section 8 of Article I of the Constitution of the United States, which grants to Congress the power to regulate commerce with foreign nations and among the several states, and the meaning, purpose, and effect of all of the provisions of said Holding Company Act hereinbefore specifically recited is to prohibit or regulate the performance of acts which, in so far as they may be performed by the defendants, do not constitute commerce with foreign nations or among the several states, or directly affect such commerce. In so far as any of the companies sought to be regulated by said Act, and specifically any defendant, may be held to be in any respect engaged in interstate commerce, or in
163 so far as any of the matters or things sought to be regulated by said Act may be held to constitute regulations of interstate commerce, as applied to any company, and particularly any defendant herein, said Act is void, and in excess of the powers of the Congress, in that it attempts to regulate, without distinction and by inseparable provisions, both companies engaged in interstate commerce and companies not engaged in interstate commerce, and acts of interstate commerce and acts not of interstate commerce.

(2) Said Act, by its language, purpose and effect, attempts to regulate matters not within any of the powers conferred upon the Congress by the Constitution of the United States, and said Act, and all the provisions thereof, particularly those hereinbefore recited in paragraphs 43, 46, and 47 hereof, in violation of the Tenth Amendment to the Constitution of the United States.

(3) Said Act is an unlawful delegation of legislative powers to plaintiff Commission, and violates Section 1 of Article I of the Constitution of the United States by which legislative powers are granted to the Congress, in that no adequate standards are provided in the Act by which the action of the Commission is to be guided or controlled; by the terms of said Act, it is provided that the action of said Commission shall be such as in its uncontrolled discretion it may find necessary or appropriate "in the public interest or for the protection of investors or consumers" or "to prevent the circumvention of

the provisions of this title or the rules, regulations, or orders thereunder."

(4) The provisions of said Act which deny to non-complying companies right to use the mails or facilities of commerce in ordinary business transactions are in excess of the powers of Congress granted by Section 8 of Article I of the Constitution of the United States either to regulate commerce or to establish post offices and post roads, and constitute a deprivation of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(5) The provisions of the Act hereinbefore referred to, particularly those enumerated and referred to, in paragraphs 43, 44, 46, and 47 (and the enforcement thereof as set forth in paragraphs 50 and 51) hereof, which purport to, and if enforced will, take from defendants the right and power to acquire, maintain, administer,
and dispose of their property, and to exercise ordinary pro-
164 prietary rights with respect thereto, and vest in plaintiff Commission control of such property, its acquisition and disposition, including even the capital and corporate reorganization of defendant Bond and Share and all the other defendants and the redistribution of voting power among the security holders of their respective subsidiary companies, deprive such defendants of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States and also deprive such defendants of rights, powers, privileges, and immunities conferred upon them under and pursuant to the laws of the states in which they were respectively organized and constitute an encroachment upon the reserved powers of said states, in violation of the Tenth Amendment to the Constitution of the United States.

(6) The provisions of Section 4 (a) (2) and (6) of said Act which prohibit defendants Bond and Share and American Gas, as unregistered holding companies, by use of the mails or any means or instrumentality of interstate commerce, from taking any step in the erformance of any service, sales, or cinstruction contract or from owning securities of any subsidiary company taking any such step and the provisions of Section 13 (a) and (b) of said Act which prohibit said defendants after April 1, 1936, from taking directly any step in the performance of any such service, sales, or construction contract or from taking any such step through a subsidiary company except at cost, and then only in accordance with terms, conditions, and limitations prescribed by plaintiff Commission, destroy contract rights, presently threaten to disrupt and destroy the valuable service organizations now maintained by said defendant American Gas and by defendant Bond and Share's wholly-owned subsidiary company, Ebasco Services Incorporated, and will deprive said defendants of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(7) In limiting review of the orders and rules of plaintiff Commission by providing that upon such review the findings of said Commission as to the facts, if supported by substantial evidence, shall be conclusive, the Act deprives defendants of their right to a judicial determination of all questions of fact affecting their constitutional rights, or affecting the jurisdiction of said Com-
165 mission to exercise the powers attempted to be delegated to it, and deprive defendants of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(8) The provisions of Section 29 of said Act, quoted in paragraph 43 hereof, impose penalties for violation of said Act upon officers and employees of defendants, and upon defendants themselves, so excessive as to coerce compliance by defendants with the unlawful provisions of said Act, and the rules, regulations and orders of plaintiff Commission which may be made thereunder, and thus deny defendants their day in court, deprive defendants of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States and will impose excessive fines and inflict cruel and unusual punishments upon defendants in violation of the Eighth Amendment to the Constitution of the United States.

(9) The disabilities and prohibitions imposed on nonregistered holding companies by Section 4, and the requirement of registration imposed by Section 5 of the Act, with the ensuing consequences of such registration imposed by subsequent sections hereinbefore enumerated, are referable to no Federal standard or constitutional power of the Federal government, but are arbitrary, unreasonable, and discriminatory, in that they impose, upon an arbitrarily selected group of companies in a class, disabilities, prohibitions, duties and limitations to which other companies in the same class are not subject, but from which they are exempt. Such arbitrary classification constitutes a deprivation of the liberty and property of the companies subjected thereto without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(10) By the act of registration of holding companies attempted to be imposed by Sections 4 and 5 of said Act, jurisdiction is sought to be conferred upon and acquired by the plaintiff Commission to control, regulate and manage not only the registering holding company, but also each and every of its subsidiary utility and non-utility companies, as defined in said Act, irrespective of whether or not said holding company or said subsidiary companies may do any
166 business in interstate commerce, or may otherwise be subject to Federal control and regulation. Said Act, therefore, seeks to establish Federal control of matters, persons, corporations and things in excess of the power of the Federal government under the commerce clause or any other clause of the Constitution of the United States, invades the reserved rights of the states and is in violation of the Tenth Amendment to said Constitution.

49. Being advised by counsel and believing that said Holding Company Act is wholly unconstitutional and void, and of no effect, and that registration thereunder would prejudice defendants' rights to attack the validity and constitutionality of the Holding Company Act and to full and adequate judicial relief, and adequate protection against the attempted unlawful interference by plaintiff Commission and by the Commissioners with defendants' property and business, and the imposition or attempted imposition of the penalties prescribed by the Act for refusal to conform thereto, and would involve defendants in a multiplicity of suits, defendants are constrained in protecting their constitutional rights to refrain and have refrained from registration, and do not propose, nor intend, voluntarily to register under said Act, as provided by Section 5 thereof, nor otherwise voluntarily to turn over the management of their properties or business from their boards of directors to the asserted jurisdiction of said Commission involved in such registration.

50. Defendants are informed and believe and therefore allege that plaintiff Securities and Exchange Commission, and the cross-defendants, Commissioners, Attorney General and Postmaster General, asserting their intention to enforce the provisions of the Act, have released through the press statements to the effect (quoting from the release of the Attorney General) that:

"In enforcing the Act it is proposed promptly to institute civil proceedings against one or more large and important companies who may fail to register to enforce compliance with its provisions and to seek decisions from the Supreme Court sustaining the validity of the Act. In the meanwhile it is not proposed to institute criminal proceedings, and if later it should become necessary to institute criminal proceedings against any company, it is not the intention of this department to seek to exact penalties for earlier offenses which might unduly penalize the investors in the offending company."

167

and (quoting from the official Postal Bulletin dated December 5, 1935, signed by the Postmaster General):

"Whatever may be the authority, if any, of the Postmaster General to exclude from the mails matters sent in violation of the act, the Postmaster General does not intend to exclude any company from using the mails, at least not before the validity of the act is judicially determined by the Supreme Court. You will accordingly take no steps to exclude unregistered holding companies from the use of the mails."

Such statements of the Attorney General and the Postmaster General, while accepted by the defendants, do not estop said officials, or their successors in office, from instituting such proceedings, and express merely their present intention, which they may withdraw at any time. The Act imposes upon plaintiff Securities and Exchange Commission and the Commissioners and upon the Attorney General and the Postmaster General (and through them

upon United States District Attorneys and Postmasters) the legal duty of enforcement, and the defendants are informed and believe and, therefore, allege on information and belief that the Attorney General himself does not presently or without further notice propose to commence or institute any civil or criminal proceedings to enforce such Holding Company Act, but has reserved the right in his sole discretion as to time and manner to proceed with such enforcement of such Act, and that the Postmaster General does not presently or without further notice propose to exclude any unregistered holding company from using the mails or to exclude from the mails matter sent in violation of said Holding Company Act, but has reserved the right in his sole discretion as to time and manner to proceed with such enforcement of such Act.

But whether or not enforced by the imposition of either criminal or civil penalties, or one or a number of suits to collect fines and penalties, the existence of the provisions of such Act on the statute books, as hereinbefore alleged, constitutes an immediate, present,

and irreparable threat, damage, and injury to defendants'
168 property, and causes an immediate impairment of the value of said property and of defendants' businesses and casts a cloud on defendants' title to such property, and questions the validity of substantially every act and contract of defendants until the invalidity of such Act shall be judicially declared, all as more fully hereinbefore alleged.

Defendants are further informed and believe, and therefore allege, that, subject to the foregoing statements of immediate intention, and in their sole discretion as to time and manner, the plaintiff Securities and Exchange Commission, the Commissioners, the Attorney General, and the Postmaster General, under color of the pretended authority of said Holding Company Act contending that such Act validly confers authority upon them, are combining and conspiring together and with each other to injure, and are threatening to injure, defendants, and will, unless restrained by this Court of Equity, proceed so to do in the following manner:

(a) The plaintiff Securities and Exchange Commission intends and is threatening to issue rules, regulations, and orders applicable to defendants providing for the form and the contents of registration statements to be filed with said Securities and Exchange Commission, together with a vast number of schedules, appendices, and other documents to be attached thereto, all as provided in Section 5 (b) of said Holding Company Act and more particularly described in paragraph 44 hereof; said plaintiff Commission further intends and threatens, if defendants file with said Commission notifications of registration, to prevent, control, and regulate, subject to its arbitrary discretion, each and every act of defendants and their subsidiary companies falling within the classifications and descriptions of various acts prohibited or subjected to regulation or control by said Commission under the provisions of said Holding Company Act, which said acts are more specifically set forth in paragraphs 46

and 47 hereof; said plaintiff Commission and the Commissioners further intend and threaten, if defendants shall not file such notifications of registration, to enforce the provisions of said Holding Company Act, under the purported authority of Section 18 (f) thereof, by transmitting to the Attorney General evidence of failure to register and of acts declared unlawful by Section 4 (a) of
169 said Act, which acts are more specifically set forth in paragraph 43 hereof; (b) subject to the allegations set forth in this paragraph 50 hereof, the Attorney General intends and threatens to institute, upon receiving such reports and information from the plaintiff Commission and the Commissioners, a large number of criminal proceedings to collect the fines and impose the punishments provided for by said Act, which proceedings and the cumulative, onerous, and excessive penalties authorized by the provisions of said Act will have the effect of coercing defendants to register under said Act and to accept the rules, regulations, and orders of the plaintiff Securities and Exchange Commission and thus permit said plaintiff to regulate every detail of defendants' businesses in accordance with the arbitrary and uncontrolled discretion of said plaintiff Commission; and (c) subject to the allegations set forth in this paragraph 50 hereof, the Postmaster General intends and threatens to enforce the provisions of Section 4 (a) of said Act by preventing the defendants from using the mails to conduct the acts necessarily incidental to their businesses specifically set forth in paragraph 43 hereof, which acts are done in the lawful and necessary conduct of their business, thus altogether preventing them from carrying on their business, or any part thereof. Each and all of the foregoing threatened acts of said plaintiff Commission and of the Commissioners, the Attorney General, and the Postmaster General will result in immediate and irreparable injury, loss and damage to defendants as is hereinafter in the paragraph immediately following more specifically alleged.

51. The right of each defendant to manage its property and to conduct its business free from all interference and restraint by the plaintiff Securities and Exchange Commission and by the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, by the Attorney General and the Postmaster General acting under color of said Holding Company Act, is a property right of great value which will be destroyed by said plaintiff Commission and by the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, by said Attorney General and said Postmaster General to the irreparable injury of each such defendant, unless they are restrained from enforcing the provisions of said Act
170 against any of the defendants. The property right of each such defendant to enjoy and conduct its business free from any unlawful interference will be invaded and destroyed whether or not any such defendant shall register under said Holding Company Act, in the following manner:

(a) Even though this Court does not direct the defendants to register under said Act, the provisions of Section 4 (a), and the threatened enforcement thereof by plaintiff Securities and Exchange Commission and by the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, by the Attorney General and Postmaster General, will immediately impair, and threaten wholly to destroy, the value of the investment of the defendants in the securities of the companies described in paragraphs 32 to 36 hereof. As unregistered holding companies, the continued ownership by defendants on and after December 1, 1935, of said securities is made unlawful and it is also made unlawful for defendants to dispose of said securities by use of the mails or by any means or instrumentality of interstate commerce or to sell said securities in any manner having reason to believe that such securities will be resold by use of the mails or any means or instrumentality of interstate commerce, by reason whereof, and of the threatened acts of plaintiff Securities and Exchange Commission and of the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, of the Attorney General and Postmaster General, defendants will be wholly deprived of the benefits of ownership of said securities and their value to defendants will be wholly destroyed and defendants will be likewise deprived of any practicable market in which they may dispose of said securities and realize anything thereon and the property of defendants will thus be confiscated;

(b) Even though this Court does not direct the defendants to register under said Act, they will be harassed by plaintiff Securities and Exchange Commission and by the Commissioners, and, subject to the allegations set forth in paragraph 50 hereof, by the Attorney General and Postmaster General and subjected to a great number of civil and criminal suits and the danger of excessive and onerous penalties amounting to $200,000 for each and every offense by reason of the acts set forth in paragraph 43 hereof which it will be necessary for defendants to do in the ordinary and daily conduct of their

171 business and which are by said Act declared to be unlawful. Against such numerous suits and prosecutions, and against the threat of the excessive penalties to be imposed thereby, defendants have no adequate remedy at law;

(c) If defendants are forced by the threats hereinabove set forth or directed by order of this Court to file a notification of registration and, subsequently, the other documents and information required under the provisions of Section 5 of said Act, they will be forced to expend in the aggregate a large sum of money, to wit, not less than $325,000 in order to prepare and compile all the information, schedules, appendices, and documents required to be contained in or filed with their complete registration statements and which sum so expended will be wasted and dissipated;

(d) If defendants are forced by the threats hereinabove set forth or directed by order of this Court to register under said Act, they

will immediately be forced to institute or defend a large number of proceedings to review or to resist the enforcement of orders and regulations of said Commission, which said Commission is required to make in accordance with the provisions of said Act more particularly alleged in paragraph 46, all of which provisions, as hereinabove alleged, are in violation of the Constitution of the United States;

(e) If defendants are forced by the threats hereinabove set forth or directed by order of this Court to register under said Act, the values of the property and business of defendants and of the tangible and intangible property required and used therein, and of the private funds invested and risked therein will immediately be impaired, and may eventually be destroyed, by reason of the unlawful interference by plaintiff Securities and Exchange Commission and by the Commissioners with the control and direction of defendants' property and business;

(f) If defendant Bond and Share is forced by the threats hereinabove set forth, or directed by order of this Court, to register under said Act, the provisions of Section 11 of said Act will require the reorganization of said defendant in such a manner that its ownership or control will be confined to a single integrated public utility system (with such additional integrated public utility systems as the plaintiff Commission may permit in accordance with the provisions of Section 11), all at the will of the Commission at
172 any time subsequent to January 1, 1938, which provisions and the required acts of the plaintiff Securities and Exchange Commission thereunder immediately tend to destroy the value of defendant Bond and Share's said investment in the other defendants, make the financing of said companies and their subsidiary companies and the conduct of their public utility business impossible and result in the present destruction of the value of defendant Bond and Share's property and investment.

(g) If defendants American Company, Electric Company and National Company are forced by the threats hereinabove set forth, or directed by order of this Court, to register under said Act, the provisions of Section 11 of said Act will require the reorganization of said defendants and their subsidiary companies mentioned in paragraphs 32, 33, 34 and 35 hereof in such a manner that the respective subsidiary companies of each of said defendants will constitute but a single integrated public utility system as defined in said Act, and will confine the ownership or control of each of said defendants to a single one of such systems (with such additional integrated public utility systems as the plaintiff Commission may permit in accordance with the provisions of Section 11), all at the will of the Commission, at any time subsequent to January 1, 1938, which provisions and the required acts of the plaintiff Securities and Exchange Commission thereunder destroy the value of said defendants' investment in said subsidiary companies, make the

financing of said subsidiary companies and the conduct of their public utility business impossible and result in the present destruction of the value of said defendants' respective property and investments.

(h) If the remaining holding company defendants, American Gas, United Gas Corporation, Power Securities Corporation, Lehigh Power Securities Corporation and Easton Consolidated Electric Company and the operating company defendants are forced by the threats hereinabove set forth, or directed by order of this Court, to register under said Act and the holding company system of any of said defendants is found not to constitute a single integrated public utility system, the provisions of Section 11 of said Act
173 will require the reorganization of such defendant in such manner as to confine the ownership or control of such defendant to a single integrated public utility system (with such additional integrated public utility systems as the plaintiff Commisson may permit in accordance with the provisions of Section 11), all at the will of the Commission, at any time subsequent to January 1, 1938, which provisions and the required acts of the plaintiff Securities and Exchange Commission thereunder immediately threaten and tend to destroy such defendant's investment in its electric or gas utility properties and tend to injure and prevent the financing of such defendant and its subsidiary companies and the conduct of their public utility business and result in the present depreciation and ultimate future destruction of the value of such defendant's property and investment; and

(i) Whether defendants shall or shall not register under said Act, the provisions of Sections 4, 11, and 13 of said Act, and the threatened enforcement thereof by the plaintiff Securities and Exchange Commission and by the Commissioners, and, subject to the allegations in paragraph 50 hereof, by the Attorney General and Postmaster General, and the onerous and excessive penalties provided for the violation thereof, will immediately impair and will progressively tend to destroy the management of defendants, and the technical and service organizations of defendant American Gas and of Ebasco Services Incorporated, which are composed of experienced and skilled persons especially trained in the duties which they perform, and upon the continued and efficient services of whom the successful operation of defendants and their subsidiary companies depends. There is every reasonable probability that such persons will not and cannot continue in their present duties, or in the efficient performance thereof, because of the mandatory dismemberment of defendants' systems in the near future, and the present threat of criminal penalties for the doing of acts which the continued performance of their duties requires.

The controversy arising upon the facts hereinbefore alleged immediately and irreparably affects the right of the defendants to con-

duct, manage, conserve, and control the disposition of their property, and the prompt determination and declaration of defendants'
174 legal rights is immediately necessary. In order to effectually preserve and protect defendants' property rights, further relief as prayed is both necessary and proper.

By reason of all the foregoing, including the continued existence of said Act and the proceedings threatened to be taken by the plaintiff Securities and Exchange Commission and by the Commissioners, and, subject to the allegations in paragraph 50, by the Attorney General and Postmaster General thereunder, the defendants are suffering and will continue to suffer a great and irreparable injury to their property, and such injury will constitute an immediate and irreparable loss for which they have, and can have, no adequate remedy at law.

Wherefore, the premises considered, the defendants pray:

(1) That on the amended and supplemental bill of complaint and the answer herein, the amended and supplemental bill of complaint be dismissed.

(2) That on the separate defense, counterclaim and cross-bill herein:

(a) This Court enter a declaratory judgment under Section 274 (d) of the Judicial Code, as amended by the Act of June 14, 1934 (Chapter 512, 48 Stat., 955, U. S. C. A., Title 28, Section 400), that said Holding Company Act, and each and every provision thereof, is unconstitutional, void, and of no effect.

(b) This Court grant defendants after notice and hearing a temporary injunction against plaintiff Securities and Exchange Commission, enjoining said Commission, its agents and all persons acting in aid of said Commission, from making any rule, regulation, or order applicable to defendants under said Holding Company Act, and, specifically, any rule, regulation, or order under the provisions referred to in paragraphs 46 and 47 hereof.

(c) This Court grant defendants, after notice and hearing a temporary injunction against plaintiff Commission and the Commissioners, enjoining said Commission and Commissioners, and their successors in office, their agents and all persons acting in aid of them from instituting or taking any steps toward the institution of any action, proceeding or prosecution designed to compel defend-
175 ants, or the directors, officers, or employees thereof, to comply with said Act, or to compel the defendants to register under said Holding Company Act, or to enforce against defendants, or the directors, officers, or employees thereof, any penalty or other liability imposed by said Act, or authorized thereunder, on account of acts done or omitted by defendants or the directors, officers, or employees thereof; and enjoining the plaintiff Commission and the Commissioners, and their successors in office and all persons acting in aid

of it or them, from transmitting to the Attorney General, or his successors in office, any evidence of violation of said Act by the defendants or the directors, officers, or employees thereof, or in any manner from inducing said Attorney General to institute proceedings against them, or any of them.

(d) This Court grant defendants, after notice and hearing, a temporary injunction against said Attorney General, and his successors in office, and all persons acting in aid of him or his successors in office or under his superintendence or direction or the superintendence or direction of his successors in office, enjoining him and them from instituting or directing the institution of any proceeding against the defendants, or any of them, or their directors, officers, or employees, on account of any act done or omitted to be done under said Act and that this Court grant defendants, after notice and hearing, a temporary injunction against the Postmaster General and his successors in office and those acting or claiming to act under his direction or authority or under the direction or authority of his successors in office, enjoining him and them from enforcing the postal provisions of said Act by excluding from the mails any property, communication, or securities of the defendants, or any of them, or otherwise, under or by virtue of the terms or provisions or under the authority of said Holding Company Act.

(e) On final hearing this Court enter a permanent injunction to the same effect.

(f) For such other and further relief as to the Court may seem meet.

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176

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Exhibit I to answer

Properties of, and business done by, subsidiaries of American Power & Light Company

(a) Central Arizona Light and Power Company, organized under the laws of Arizona in 1920 and having its principal office and place of business in Phoenix, Arizona, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems, and a gas utility business by means of a manufactured gas plant and gas distribution systems for distributing manufactured and natural gas. All of the property of the Company used for the conduct of its electric utility business and gas utility business is located, and all of its operations are conducted, solely within the State of Arizona. The Company purchases (in Arizona) all of its natural gas requirements from Western Gas Company, a subsidiary of El Paso Natural Gas
177 Company. Such gas is transmitted into Arizona from New Mexico by said Western Gas Company. The aggregate sales of electric energy by the Company for the year 1934 were approximately 69,000,000 kilowatt hours, and its electric operating revenues were approximately $2,200,000. The aggregate operating revenues of said Company for the year 1934, including revenues from both its electric and gas utility businesses, were approximately $2,700,000.

(b) Florida Power & Light Company, organized under the laws of Florida in 1925 and having its principal office and place of business in Miami, Florida, has throughout its history conducted, and still conducts, an electric utility business by means of generating plants, transmission lines, and distribution systems, and a manufactured gas utility business by means of manufactured gas plants and gas distribution systems. All of the property of the Company used for the conduct of its said electric utility business and gas utility business is located, and all of its operations are conducted, solely within the State of Florida. The aggregate sales of electric energy by the Company for the year 1934 were approximately 170,000,000 kilowatt hours, and its electric operating revenues for said year were approximately $9,000,000.

The Company also conducts an ice business solely within the State of Florida and owns all or substantially all of the stock of three subsidiary companies rendering water and transportation service solely within the State of Florida. The aggregate operating revenues of the Company, including the revenues from its electric and gas utility and ice businesses were approximately $10,600,000 for the year 1934, and the aggregate operating revenues of said three subsidiaries for said year were approximately $1,100,000.

(c) Kansas Gas and Electric Company, organized under the laws of West Virginia in 1909 and having its principal office and place of business in Wichita, Kansas, has for many years conducted and

still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Kansas, except that certain lines extend into the State of Missouri for the distribution of electric energy to a few customers in Missouri. The Company also has a transmission
178 line extending to the Kansas-Oklahoma boundary which is used to provide temporary emergency interchange connections with a non-associate electric utility company having properties in Oklahoma and also has facilities for establishing temporary emergency interchange connections in Kansas with two other non-associate electric utility companies. The aggregate sales of electric energy by the Company in Kansas for the year 1934 were approximately 197,000,000 kilowatt hours and the operating revenues therefrom were approximately $5,000,000. The aggregate sales of electric energy by the Company in Missouri for the year 1934 were approximately 6,000,000 kilowatt hours and the operating revenues therefrom were approximately $80,000. All of the electric energy sold by the Company in Missouri is sold at distribution voltages. The sales of electric energy over the Company's transmission line extending to the Kansas-Oklahoma boundary in the year 1934 amounted to approximately 100,000 kilowatt hours and represented transformer losses only. In addition thereto, there was an unavoidable interchange at said point incident to voltage regulation.

(d) Minnesota Power & Light Company, organized as Duluth-Edison Electric Company under the laws of Minnesota in 1906 (name changed to Minnesota Power & Light Company in 1923) and having its principal office and place of business at Duluth, Minnesota, has for many years conducted, and still conducts, an electric utility business by means of generating plants, transmission lines, and distribution systems, located solely within the State of Minnesota. Certain of the Company's transmission and distribution lines extend to the Minnesota-Wisconsin boundary where certain electric energy is sold at wholesale for resale to Northern Power Company and (through the latter Company) to Superior Water, Light, and Power Company, associate electric utility companies. The aggregate sales of electric energy by the Company at the Minnesota-Wisconsin boundary for the year 1934 were approximately 35,000,000 kilowatt hours, and the revenues therefrom were approximately $420,000. The aggregate sales of electric energy by the Company in the State of Minnesota, including such sales at said boundary for the year 1934 were approximately 272,000,000 kilowatt hours, and its electric operating revenues were approximately $5,300,000. The Company also renders steam heating service in certain communi-
179 ties in Minnesota. In 1935 the Company's sales of electric energy in Minnesota itself increased approximately 30 percent.

(e) The Montana Power Company, organized under the laws of New Jersey in 1912 and having its principal office and place of business in Butte, Montana, has for a number of years conducted, and

still conducts, an electric utility business by means of generating stations, transmission lines, and distribution systems and a natural gas utility business by means of gas distribution systems, all of the Company's gas requirements being purchased in Montana from an associate company. All of the properties used for the conduct of the Company's electric utility business and gas utility business are located solely within Montana. One of the Company's electric transmission lines extends to a point in Montana near the Idaho-Montana boundary, at which point electric energy is delivered to Idaho Transmission Company, a subsidiary electric utility company, for delivery by it to customers of The Montana Power Company in Idaho. The Company also delivers, at a point in Montana, to a non-associate railroad company, a small amount of electric energy for redelivery by said railroad company to Idaho Transmission Company at a point in Idaho. The aggregate sales of electric energy by said Company in Montana, exclusive of electric energy so delivered to Idaho Transmission Company, for the year 1934 were approximately 690,000,000 kilowatt hours and its electric operating revenues were approximately $7,540,000. The amount of electric energy delivered to Idaho Transmission Company for redelivery for the account of said The Montana Power Company in the State of Idaho for the calendar year 1934 was approximately 17,000,000 kilowatt hours and the revenues therefrom were approximately $110,000. The Company also renders water and irrigation service and steam heating service in certain communities solely in Montana. The aggregate operating revenues of the Company, including the revenues from its electric utility business, gas utility business, and water irrigation and steam heating service, were approximately $9,010,000 for the year 1934. There have been no changes in the character of the Company's business in 1935, but kilowatt hour sales and revenues have been substantially higher, a prolonged strike in an important industry having reduced sales and revenues in 1934.

180 The Montana Power Company also owns all, or substantially all, of the stock of, and controls the operations of, Idaho Transmission Company, a corporation organized under the laws of Montana. Idaho Transmission Company conducts an electric utility business by means of transmission lines and a distribution system located solely within Idaho, except that one transmission line extends over the Montana-Idaho boundary line for a distance of approximately 10 feet, where it interconnects with a transmission line of The Montana Power Company. The principal business of Idaho Transmission Company is the delivery of electric energy received from The Montana Power Company in Montana to mining customers of The Montana Power Company in the State of Idaho and the interchange of electric energy with The Washington Water Power Company, an associate company, for account of The Montana Power Company. In the year 1934 Idaho Transmission Company so delivered to customers of The Montana Power Company approximately

17,000,000 kilowatt hours and interchanged with The Washington Water Power Company approximately 140,000 kilowatt hours in deliveries and 110,000 kilowatt hours in receipts, and for this service it received from The Montana Power Company approximately $37,000 in service charges and rentals. Idaho Transmission Company also owns and operates a small distribution system in Avery, Idaho, over which in the year 1934 it sold approximately 50,000 kilowatt hours, receiving revenues from such sales of approximately $3,000. The electric energy so sold was received from The Montana Power Company over a transmission line belonging to a nonassociate railroad company. Application has been made to the Federal Power Commission for permission to transfer all the properties of Idaho Transmission Company to The Montana Power Company. In 1935 receipts of electric energy from The Washington Water Power Company were substantially increased.

The Montana Power Company also owns all or substantially all of the capital stock of Rocky Mountain Power Company, a Delaware corporation which owns a partially constructed hydro-electric development in Montana.

(f) Montana Power Gas Company, organized under the laws of New Jersey in 1932 and having its principal office and place
181 of business in Butte, Montana, has throughout its history conducted, and still conducts, a natural gas business by means of natural gas production and transmission facilities located solely within the State of Montana. The Company also purchases substantial amounts of natural gas from sources solely within the State of Montana. The aggregate sales of gas by said Company for the year 1934 were approximately 4,900,000 thousand cubic feet. The operating revenues of said Company from all sources for said year were approximately $960,000. There have been no changes in the character of the Company's business in 1935, but its sales and revenues have increased substantially. A large part of this Company's gas sales were to an associate company, The Montana Power Company, which conducts a retail gas utility business in Montana. As an incident of and in connection with its gas business Montana Power Gas Company also extracts gasoline and butane from natural gas, owns and operates certain oil production facilities located solely within the State of Montana, and sells oil, butane and natural gas gasoline.

(g) Nebraska Power Company, organized under the laws of Maine in 1917 and with its principal office and place of business at Omaha, Nebraska, has for many years conducted, and still conducts, an electric utility business by means of a generating plant and transmission lines and distribution systems located solely within the State of Nebraska. The Company sells certain electric energy (approximately 26,000,000 kilowatt hours in 1934) at its generating plant at wholesale for resale to its subsidiary, Citizens Power & Light Company, near the Iowa-Nebraska boundary and also sells (approximately 23,000,000 kilowatt hours in 1934) electric energy at wholesale for

resale to a non-associate electric utility having properties in Nebraska and Iowa at another point in Nebraska near said Iowa-Nebraska boundary. The sales of electric energy so made were approximately 49,000,000 kilowatt hours in the year 1934, with revenues therefrom of approximately $420,000. The aggregate sales of electric energy by the Company in Nebraska in 1934, including such sales at wholesale, were approximately 320,000,000 kilowatt hours and its electric operating revenues were approximately $6,500,000.

Nebraska Power Company owns all or substantially all the
182 capital stock of, and controls the operations of, Citizens Power & Light Company, a New Jersey corporation which conducts an electric utility business by means of a distribution system in and near the City of Council Bluffs, Iowa, including a distribution line which crosses the Iowa-Nebraska boundary and extends into Nebraska a distance of approximately 700 feet to the generating station of Nebraska Power Company by means of which it purchases its requirements of electric energy from said Nebraska Power Company. Citizens Power & Light Company also transfers a small amount of electric energy from Nebraska (included in the total of 49,000,000 kilowatt hours sold by Nebraska Power Company as set forth above) for the account of a non-associate company, but makes all of its sales of electric energy in the State of Iowa. The aggregate sales of electric energy by said Citizens Power & Light Company in 1934 were approximately 22,000,000 kilowatt hours and its electric operating revenues were approximately $820,000.

(h) New Mexico Electric Service Company, organized under the laws of New Mexico in 1930, and having its principal office and place of business in Hobbs, New Mexico, has throughout its history conducted and still conducts an electric utility business by means of generating plants and distribution systems located, and operations carried on, solely within the State of New Mexico. The aggregate sales of electric energy by said Company for the calendar year 1934 were approximately 2,200,000 kilowatt hours, and its electric operating revenues for said year were approximately $87,000. There have been no changes in the character of the Company's business in 1935, but its kilowatt hour sales and revenues have increased substantially.

(i) Northern Power Company, organized under the laws of Wisconsin in 1906 and having its principal office and place of business at Superior, Wisconsin, has for many years conducted, and still conducts, an electric utility business by means of distribution lines located solely within the State of Wisconsin. Certain of such lines extend to the Wisconsin-Minnesota boundary and are used solely for receiving electric energy at said boundary from Minnesota Power & Light Company for redelivery to Superior Water, Light and Power Company and for distribution and sale to consumers, all within the State of Wisconsin. The aggregate amount of elec-
183 tric energy transported from said boundary by said Company over said lines in the year 1934 amounted to approximately

35,000,000 kilowatt hours. Of this amount, approximately 13,000,000 kilowatt hours were so redelivered to Superior Water, Light and Power Company and the remainder were used by the Company itself for distribution to its own customers. The Company received $6,000 for such redelivery service in 1934 and its total operating revenues in that year, excluding the payment for such redelivery service, were approximately $306,000.

(j) Northwestern Electric Company, organized under the laws of Washington in 1911 and with its principal office and place of business at Portland, Oregon, has since its organization conducted and still conducts an electric utility business by means of steam and hydro-electric generating plants, transmission lines, and distribution systems located within the States of Oregon and Washington. The Company owns certain transmission lines which cross the Oregon-Washington boundary and are used for transmitting substantial amounts of electric energy across such state boundary for ultimate sale to retail customers of the Company or at wholesale. The Company in 1934 purchased the major part of its energy requirements in Washington from associate companies, such purchases including large amounts of surplus energy temporarily available at low cost which made it advantageous for the Company to limit the operation of its Oregon steam-electric generating plants to the furnishing of stand-by service.

The division of the Company's electric business between the states of Oregon and Washington in 1934 is indicated by the following relations: Electric generating capacity installed and available under contract: Oregon, 62%; Washington, 38%; Electric energy generated and purchased: Oregon, 1%; Washington, 99%; Electric energy sales: Oregon, 49%; Washington, 51%; Average maximum firm power demand: Oregon, 65%; Washington, 35%; Electric revenue: Oregon, 73%, Washington, 27%; Customers: Oregon, 79%; Washington, 21%. The aggregate sales of electric energy by the Company in Oregon and Washington in 1934 were approximately 135,000,000 kilowatt hours in the case of Oregon, with electric operating revenues therefrom of approximately $2,360,000 and approxi-
184 mately 140,000,000 kilowatt hours in the case of Washington with electric operating revenues therefrom of approximately $870,000. The Company transferred across the Oregon-Washington boundary for its own account in 1934 approximately 156,000,000 kilowatt hours of electric energy. Its aggregate sales of electric energy at wholesale for resale in that year, involving in part the incidental movement of electric energy across state boundaries, were approximately 25,000,000 kilowatt hours (consisting principally of temporarily available surplus energy) and the aggregate revenues therefrom were approximately $62,000, or less than 2% of the Company's aggregate electric operating revenues in that year. Approximately 89% of the energy sold in Washington represents sales to two high-load-factor industrial power users and sales of temporarily available surplus energy.

Northwestern Electric Company also has carried on for a number of years and still carries on the business of supplying steam heat in the City of Portland, Oregon. The aggregate operating revenues of the Company in 1934, including the operating revenues from said steam heating service, were approximately $3,530,000.

(k) Pacific Power & Light Company, organized under the laws of Maine in 1910 and having its principal office and place of business at Portland, Oregon, has for a number of years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located within the States of Oregon and Washington. The Company owns certain transmission lines which cross the Oregon-Washington boundary and are used for transmitting certain amounts of electric energy across such state boundary for ultimate sale to retail customers of the Company or at wholesale.

The division of the Company's electric business between the states of Oregon and Washington in 1934 is indicated by the following relations: Electric generating capacity installed and available under contract: Oregon, 46%; Washington, 54%; Electric energy generated and purchased: Oregon, 38%; Washington, 62%; Electric energy sales: Oregon, 28%; Washington, 72%; Electric revenue: Oregon, 40%; Washington, 60%; Customers: Oregon, 38%; Washington, 62%. The aggregate sales of electric energy by the Com-
185 pany in Oregon and Washington in 1934 were approximately 52,000,000 kilowatt hours in the case of Oregon, with electric operating revenues of approximately $1,600,000 and approximately 134,000,000 kilowatt hours in the case of Washington, with electric operating revenues of approximately $2,400,000. The Company transferred across the Oregon-Washington boundary for its own account in 1934 approximately 47,000,000 kilowatt hours of electric energy. Its aggregate sales of electric energy at wholesale for resale in that year, involving in part the incidental movement of electric energy across state boundaries, were approximately 45,000,000 kilowatt hours (consisting principally of temporarily available surplus energy) and the aggregate revenues therefrom were approximately $108,500, or less than 3% of the Company's aggregate electric operating revenues in that year. The Company, which also renders certain steamheating and water service, in 1934 purchased a large part of its energy requirements from associate electric utility companies.

Pacific Power & Light Company owns all or substantially all of the capital stock of, and controls the operations of, Inland Power & Light Company, an Oregon corporation which owns a large hydroelectric generating station in Washington and two small hydroelectric generating stations in Oregon, as well as a transmission line in Washington. Inland Power & Light Company sells electric energy (at its generating stations) to Pacific Power & Light Company and to the associate Northwestern Electric Company, its sales to and revenues from said Companies, respectively, in the year 1934 having been

approximately 3,000,000 kilowatt hours with approximately $20,000 of revenue therefrom and 177,000,000 kilowatt hours (including substantial quantities of surplus energy) with approximately $540,000 of revenue therefrom.

(l) Portland Gas & Coke Company, organized under the laws of Oregon in 1910 and having its principal office and place of business in Portland, Oregon, has for many years conducted and still conducts a gas utility business by means of manufactured gas plants, transmission mains, and distribution systems located entirely in the State of Oregon, except that its distribution system extends across the Oregon-Washington boundary line for the purpose of serving customers of the Company in one community in the State
186 of Washington. The Company serves approximately 2,000 customers in the State of Washington and the aggregate sales of gas by the Company for the year 1934 in Washington were approximately 58,000 thousand cubic feet and the gas operating revenues therefrom were approximately $63,000. The Company serves approximately 80,000 customers in the State of Oregon and the aggregate sales of gas for the year 1934 in that State were approximately 2,500,000 thousand cubic feet and the gas operating revenues therefrom were approximately $2,600,000. The Company also carries on the manufacture and sale of carbon briquets and other by-products derived from the manufacture of gas. Its aggregate operating revenues from the sales of gas and of by-products amounted to approximately $3,000,000 for the year 1934.

(m) Superior Water, Light and Power Company, organized under the laws of Wisconsin in 1889 and having its principal office and place of business in Superior, Wisconsin, has for many years conducted, and still conducts, an electric utility business by means of a stand-by generating station and a distribution system and a gas utility business by means of a gas distribution system, all of such property being located solely within the State of Wisconsin. Except during periods of emergency, the Company obtains its requirements of electric energy from Minnesota Power & Light Company, an associate company, which energy is delivered to the Company, within the State of Wisconsin, by Northern Power Company, also an associate company. All of the electric energy so purchased by the Company is distributed by the Company in the State of Wisconsin. The aggregate sales of electric energy by said Company for the year 1934 were approximately 11,000,000 kilowatt hours and its electric operating revenues were approximately $501,000. The Company also renders water service in the State of Wisconsin, and in connection therewith pumps water from wells located in the State of Minnesota, but renders no water service outside of the State of Wisconsin. The Company purchases its manufactured gas requirements from a non-associate company at the Minnesota-Wisconsin boundary. The aggregate operating revenues of said Company, including the revenues from its electric business, gas business, and water business, were approximately $905,000 for the year 1934.

187 (n) Texas Electric Service Company, organized under the laws of Texas in 1929 and having its principal office and place of business in Fort Worth, Texas, has conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located, and operations carried on, solely within the State of Texas. The aggregate sales of electric energy by the Company in the year 1934 were approximately 283,000,000 kilowatt hours, with electric operating revenues of approximately $6,470,000. For a number of years the Company also distributed electric energy at retail in Piedras Negras, Mexico, but has sold all its properties in Mexico.

(o) Texas Power & Light Company, organized under the laws of Texas in 1912 and having its principal office and place of business in Dallas, Texas, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located, and operations carried on, solely within the State of Texas. The aggregate sales of electric energy by the Company for the year 1934 were approximately 350,000,000 kilowatt hours, and its electric operating revenues were approximately $9,100,000.

(p) Texas Public Utilities Corporation, organized under the laws of Texas in 1926 and having its principal office and place of business in Dallas, Texas, has throughout its history conducted, and still conducts, an electric utility business by means of a stand-by generating station and a distribution system located, and operations carried on, solely within the State of Texas. Except during periods of emergency the Company purchases in Texas its entire requirements of electric energy for electric utility purposes from an associate electric utility company, the above-named Texas Power & Light Company. The aggregate sales of electric energy by the Company in 1934 were approximately 1,400,000 kilowatt hours and its electric operating revenues for said year were approximately $75,000. The Company also renders water service and ice service solely within the State of Texas. The Company buys natural gas at wholesale, from a non-associate company operating solely within the State of Texas, and resells such natural gas at wholesale, solely within the State of Texas, but it neither owns nor operates any facilities
188 for distribution of natural gas. The aggregate operating revenues of the Company for the year 1934, including the revenues from its gas, water, ice, and electric businesses, were approximately $1,100,000.

(q) The Washington Water Power Company, organized under the laws of Washington in 1889 and with its principal office and place of business at Spokane, Washington, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located within the states of Washington and Idaho. The Company owns certain transmission lines which cross the Washington-Idaho bound-

ary and are used for transmitting certain amounts of electric energy across such state boundary for ultimate sale to retail customers of the Company or at wholesale. The Company's transmission system is interconnected with the transmission systems of the associate Pacific Power & Light Company in Washington and the associate Idaho Transmission Company in Idaho for sale of electric energy to and interchange of electric energy with said associate companies.

The division of the Company's electric business between the states of Washington and Idaho in 1934 is indicated by the following relations: Electric generating capacity installed and available under contract, Washington 89%, Idaho 11%; Electric energy generated and purchased, Washington 97%, Idaho 3%; Electric energy sales, Washington 74%, Idaho 26%; Electric revenues, Washington 78%, Idaho 22%; Customers, Washington 82%, Idaho 18%. The aggregate sales of electric energy by the Company in Washington and Idaho in 1934 were approximately 460,000,000 kilowatt hours in the case of Washington, with electric operating revenues of approximately $5,200,000, and approximately 160,000,000 kilowatt hours in the case of Idaho, with electric operating revenues of approximately $1,500,000. The Company transferred across the Washington-Idaho boundary for its own account in 1934 approximately 233,000,000 kilowatt hours of electric energy. Its aggregate sales of electric energy in that year at or across state boundaries at wholesale for resale were approximately 10,400,000 kilowatt hours (including substantial quantities of surplus power) and the aggregate revenues therefrom were approximately $52,000, or less than
189 1% of the Company's aggregate electric operating revenues in that year. The Company also renders certain local water service in Idaho and Washington. In 1935 the Company also sold through Idaho Transmission Company to The Montana Power Company for resale approximately 12,300,000 kilowatt hours, its revenues therefrom having been approximately $37,000.

The Washington Water Power Company owns all or substantially all of the common stock of, and controls the operations of, Chelan Electric Company, a Washington corporation which owns a large hydro-electric generating station in the State of Washington and smaller hydro-electric generating stations in the State of Idaho. All electric energy generated by Chelan Electric Company is delivered (at its generating stations) to The Washington Water Power Company.

The Washington Water Power Company also owns all or substantially all of the outstanding capital stock of, and controls the operations of, Spokane Central Heating Company and Spokane United Railways which, respectively, render steam heating service and transportation service in the City of Spokane, Washington. The operating revenues of said three subsidiary companies in the year 1934 were approximately $1,300,000, of which $300,000 represented intercompany transactions.

The statements of earnings, sales, and operations made for the year 1934 for the companies referred to in this exhibit are for the last calendar year for which such statements are available, and are typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

The above named direct and indirect subsidiaries of American Power & Light Company do not include certain minor companies holding land or conducting other businesses or "name-saving" companies or subsidiary companies now in the process of dissolution or other "shell" subsidiary companies, the corporate existence of which has been continued because of franichise problems, mortgage provisions, etc.

The corporate chart set forth on the next following page shows the relationships of the subsidiaries of American Power & Light Company, herein described to that Company and to one another.

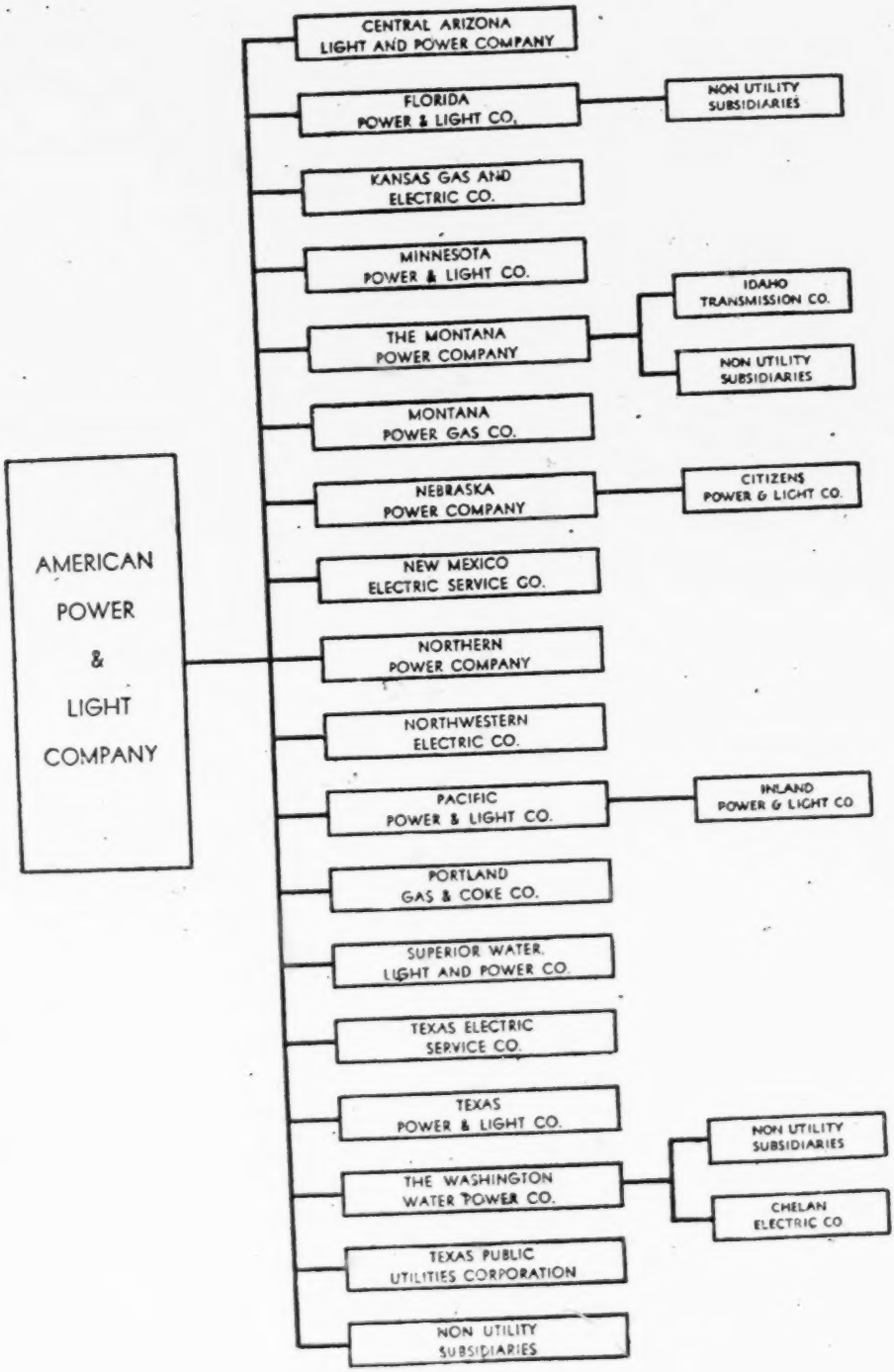
(Here follows 1 photo, folio 189½.)

190 *Exhibit II to answer*

Properties of, and Business Done by, Subsidiaries of Electric Power & Light Corporation

(a) Arkansas Power & Light Company, organized under the laws of Arkansas in 1926, with its principal office and place of business at Pine Bluff, Arkansas, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Arkansas and a gas utility business by means of natural gas distribution systems also located solely within the State of Arkansas. Certain of the Company's transmission lines extend to the Arkansas-Louisiana boundary, to the Arkansas-Mississippi boundary and to the Arkansas-Tennessee boundary, and are used for the purpose of selling electric energy to, and receiving electric energy from other electric utility companies having properties outside the State of Arkansas.

The Company in the year 1934 generated with its own facilities and purchased from sources within the State of Arkansas approximately 100,000,000 kilowatt hours of electric energy, and purchased at state boundaries approximately 222,000,000 kilowatt hours generated outside the State of Arkansas. All of the electric energy so generated and purchased was sold in the State of Arkansas, except approximately 7,700,000 kilowatt hours sold to associate companies at wholesale for resale over the Company's said transmission lines extending to the Arkansas-Louisiana, Arkansas-Mississippi, and Arkansas-Tennessee boundaries. The Company's aggregate electric operating revenues in 1934 were approximately $5,900,000, includ-


AMERICAN POWER & LIGHT COMPANY
CENTRAL ARIZONA LIGHT AND POWER COMPANY
FLORIDA POWER & LIGHT CO.
NON UTILITY SUBSIDIARIES
KANSAS GAS AND ELECTRIC CO.
MINNESOTA POWER & LIGHT CO.
THE MONTANA POWER COMPANY
IDAHO TRANSMISSION CO.
NON UTILITY SUBSIDIARIES
MONTANA POWER GAS CO.
NEBRASKA POWER COMPANY
CITIZENS POWER & LIGHT CO.
NEW MEXICO ELECTRIC SERVICE CO.
NORTHERN POWER COMPANY
NORTHWESTERN ELECTRIC CO.
PACIFIC POWER & LIGHT CO.
INLAND POWER & LIGHT CO.
PORTLAND GAS & COKE CO.
SUPERIOR WATER, LIGHT AND POWER CO.
TEXAS ELECTRIC SERVICE CO.
TEXAS POWER & LIGHT CO.
THE WASHINGTON WATER POWER CO.
NON UTILITY SUBSIDIARIES
CHELAN ELECTRIC CO.
TEXAS PUBLIC UTILITIES CORPORATION
NON UTILITY SUBSIDIARIES

ing approximately $100,000 derived from stand-by service and sales of electric energy at state boundaries, and the amount which it paid for energy purchased at state boundaries was approximately $790,000. The Company also transferred over its own lines through Arkansas to a point or points at a state boundary energy received at a state boundary for redelivery to, or for the account of, other electric utility companies from which such energy was received. The amount of electric energy so transferred in the year 1934 was approximately 80,000,000 kilowatt hours.

191 The Company also has carried on for a number of years and still carries on the businesses of distributing water, operating ice plants, and rendering steam heating and transportation service, all in various communities within the State of Arkansas. The aggregate operating revenues of the Company, including the revenues from the electric, gas, water, steam-heating, transportation, and ice business done by the Company, were approximately $7,400,000 for the year 1934.

Arkansas Power & Light Company owns all or substantially all of the capital stock of The Garland Power and Development Company of Arkansas, an inactive company, which owns certain non-utility land in the State of Arkansas and which also owns 100% of the capital stock of White River Power Company, which, in turn, has certain rights and has made sundry investigations, etc., in connection with a proposed hydro-electric development on the White River in the State of Arkansas. The Garland Power and Development Company also owns all or substantially all the capital stock of Capital Transportation Company, which owns, or operates under lease, transportation facilities in the State of Arkansas.

(b) Dallas Power & Light Company, organized under the laws of Texas in 1917 and with its principal office and place of business at Dallas, Texas, has for many years conducted, and still conducts, an electric utility business by means of a generating plant, transmission lines, and a distribution system located, and operations conducted, solely within the State of Texas. The aggregate sales of electric energy by the Company in the year 1934 were approximately 200,000,000 kilowatt hours and its electric operating revenues were approximately $5,200,000.

(c) Louisiana Power & Light Company, organized under the laws of Florida in 1927 and with its principal office and place of business at Algiers, Louisiana, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Louisiana and a gas utility business by means of natural gas distribution systems also located solely within the State of Louisiana. The Company has transmission lines extending to

192 the Louisiana-Arkansas boundary and to the Louisiana-Mississippi boundary which are used principally for the purpose of selling electric energy to associate electric utility companies having properties, respectively, in said States of Arkansas and Missis-

sippi. The Company purchases (in Louisiana) the major portion of its natural gas requirements, for resale within the State of Louisiana, from, or from a subsidiary of, United Gas Public Service Company, an associate natural gas company.

The aggregate sales of electric energy at wholesale for resale over the Company's said transmission lines extending to said Louisiana-Arkansas and Louisiana-Mississippi boundaries were approximately 360,000,000 kilowatt hours in the year 1934 and the revenues therefrom were approximately $1,500,000. In the year 1934, Company also purchased approximately 5,000,000 kilowatt hours over said lines. The aggregate sales of electric energy by the Company in the State of Louisiana and over said transmission lines extending to said state boundaries were approximately 550,000,000 kilowatt hours in 1934 and the electric operating revenues therefrom were approximately $4,500,000. The Company also transferred over its own lines through Louisiana to a point or points at a state boundary electric energy received at a state boundary for re-delivery to an associate company from which such energy was received. The amount of electric energy so transferred in the year 1934 was approximately 1,347,000 kilowatt hours.

The Company also has carried on for a number of years and still carries on the businesses of distributing water, operating ice plants, and rendering transportation service, all in various communities within the State of Louisiana. The aggregate operating revenues of the Company, including the revenues from the electric, gas, water, transportation, and ice businesses done by the Company, were approximately $5,500,000 for the year 1934.

(d) Mississippi Power & Light Company, organized under the laws of Florida in 1927 and with its principal office and place of business at Jackson, Mississippi, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Mississippi and a gas utility business by means of natural gas distribution systems also located solely within
193 the State of Mississippi. Certain of the Company's transmission lines extend to the Mississippi-Louisiana boundary, to the Mississippi-Arkansas boundary and to the Mississippi-Tennessee boundary, and are used principally for the purpose of purchasing electric energy generated by other electric utility companies having properties outside the State of Mississippi. The Company purchases (in Mississippi) its natural gas requirements, for resale within the State of Mississippi, from United Gas Public Service Company, an associate natural gas company, from Southern Natural Gas Corporation, Memphis Natural Gas Company, and Interstate Natural Gas Company, and from two small local companies.

The Company, in the year 1934, generated with its own facilities and purchased from sources within the State of Mississippi approximately 8,000,000 kilowatt hours and purchased from associated electric utility companies approximately 140,000,000 kilowatt hours gen-

erated outside the State of Mississippi, all for sale to consumers in the State of Mississippi except as hereinafter referred to. The operating revenues from such electric energy sales were approximately $3,700,000, and the amount paid for energy purchased from sources outside the State of Mississippi in 1934 was approximately $720,000. The Company also transferred over its own lines through Mississippi to a point or points at a state boundary energy received at another point or points on a state boundary for redelivery to, or for the account of, other electric utility companies from which such energy was received. The amount of electric energy so transferred in the calendar year 1934 was approximately 70,000,000 kilowatt hours. In 1934 the Company sold at the Louisiana-Mississippi boundary to one municipality at wholesale for resale 150,000 kilowatt hours, the revenue from which was $5,600. Such municipality is no longer a customer of the Company.

The said Company also has carried on for a number of years and still carries on the businesses of distributing water, operating ice plants, and rendering transportation service, all in various communities within the State of Mississippi. The aggregate operating revenues of the Company, including the revenues from the electric,
194 gas, water, transportation and ice businesses done by the Company, were approximately $4,800,000 for the year 1934.

(e) New Orleans Public Service Inc., organized under the laws of Louisiana in 1926 and with its principal office and place of business at New Orleans, Louisiana, has since its organization conducted and still conducts an electric utility business by means of a generating plant and distribution system located solely within the State of Louisiana and a gas utility business by means of a manufactured gas plant and a distribution system supplying manufactured and/or natural gas, such plant and system also being located; and all of the gas, electric, and other operations of the Company being carried on, solely within the State of Louisiana. The Company purchases (in Louisiana) its natural gas requirements from a subsidiary of United Gas Public Service Company, an associate natural gas company.

The aggregate sales of electric energy by said Company in the year 1934 were approximately 277,000,000 kilowatt hours, and its electric operating revenues were approximately $7,500,000.

The Company also has carried on for a number of years and still carries on the business of supplying transportation service in the City of New Orleans, Louisiana, all of its facilities for rendering such service being located solely within the State of Louisiana. The aggregate operating revenues of said Company, including the revenues from the electric, gas, and transportation businesses done by said Company, were approximately $15,100,000 for the year 1934.

(f) Utah Power & Light Company, organized under the laws of Maine in 1912 and having its principal office and place of business at Salt Lake City, Utah, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located within the States

of Utah and Idaho and two small generating plants, a transmission line and two small distribution systems in the State of Wyoming. The Company owns certain transmissison lines which cross the Utah-Idaho boundary and a transmission line which crosses the Utah-Wyoming boundary. Substantial amounts of electric energy are transmitted by the Company across such state boundaries
195 and are ultimately sold to customers of the Company in the states to which such energy has been transmitted.

The division of the Company's electric business among the three states of Utah, Idaho, and Wyoming in 1934 is indicated by the following relations: Electric generating capacity installed and available under contract: Utah, 49%; Idaho, 50%; Wyoming, 1%; Electric energy generated and purchased: Utah, 32%; Idaho, 67%; Wyoming, 1%; Electric energy sales: Utah, 92%; Idaho, 7%; Wyoming, 1%; Electric revenue: Utah, 89%; Idaho, 9%; Wyoming, 2%; Customers: Utah, 87%; Idaho, 11%; Wyoming, 2%. The aggregate sales of electric energy by the Company in the calendar year 1934 were approximately 390,000,000 kilowatt hours in the State of Utah, with electric operating revenues of approximately $7,660,000; approximately 27,000,000 kilowatt hours in the State of Idaho, with electric operating revenues of approximately $750,000; and approximately 2,600,000 kilowatt hours in the State of Wyoming, with electric operating revenues of approximately $140,000. The Company in 1934 transferred approximately 296,000,000 kilowatt hours across the Utah-Idaho boundary and approximately 1,800,000 kilowatt hours across the Utah-Wyoming boundary. Its aggregate sales of electric energy at wholesale for resale at or across state boundaries in that year were approximately 231,000 kilowatt hours and its aggregate revenues therefrom were approximately $3,500, or less than one-tenth of 1% of the Company's aggregate electric operating revenues in that year. The Company also conducts a steam heating business in Salt Lake City, Utah. The Company's aggregate operating revenues in the year 1934, including its revenues from its electric and steam heating business were approximately $8,650,000.

Utah Power & Light Company owns all or substantially all of the capital stock of, and controls the operations of, (i) Utah Light and Traction Company, a Utah corporation which owns and operates a transportation system in Salt Lake City and vicinity and which also owns, but has leased to Utah Power & Light Company for ninety-nine years from January 1, 1915, certain electric generating plants, sub-transmission lines and distribution systems located wholly within the State of Utah, (ii) The Western Colorado Power
196 Company, a Colorado corporation which conducts an electric utility business by means of generating plants, transmission lines and distribution systems located wholly within the State of Colorado and (iii) Bountiful Light and Power Company, a Utah corporation which conducts an electric utility business by means of a distribution system in, and in the vicinity of, the City of Bountiful, Utah. The operating revenues of Utah Light and Traction Com-

pany from its transportation business in the year 1934 were approximately $1,000,000, while the aggregate sales of electric energy by said The Western Colorado Power Company in the year 1934 were approximately 17,000,000 kilowatt hours and its electric operating revenues were approximately $490,000. The aggregate sales of electric energy by said Bountiful Light and Power Company in the year 1934 were approximately 600,000 kilowatt hours and the electric operating revenues were approximately $38,000.

Electric Power & Light Corporation also owns all of the outstanding voting securities of Power Securities Corporation, which, in turn, owns all or substantially all of the common stock of Idaho Power Company, hereinafter described.

(g) Power Securities Corporation is a corporation organized and existing under the laws of New Hampshire which owns all of the common stock, except directors' qualifying shares, and 3,030 shares of the 7% Preferred Stock, of Idaho Power Company which is conducting, and for several years last past has conducted, an electric utility business in the States of Idaho and Oregon as hereinafter described:

(g) (1) Idaho Power Company, organized under the laws of Maine in 1915 and with its principal office and place of business at Boise, Idaho, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located within the States of Idaho and Oregon. The Company has certain transmission lines which cross the Idaho-Oregon boundary; the sales of electric energy made from such lines at wholesale for resale either at the state line or in Oregon aggregated approximately 2,800,000 kilowatt hours in the year 1934, with revenues therefrom of approximately $26,000 (less than 1% of its aggregate electric operating revenues in that
197 year). The aggregate sales of electric energy by the Company in Idaho and Oregon in 1934, including such sales at wholesale over said transmission lines, were approximately 20,000,000 kilowatt hours in the case of Oregon (all transmitted into Oregon from Idaho), with electric operating revenues of approximately $340,000, and approximately $340,000,000 kilowatt hours in the case of Idaho, with electric operating revenues of approximately $3,700,000. The Company delivers substantial quantities of electric energy (approximately 223,000,000 kilowatt hours in 1934, which are included in the above figure of 340,000,000 kilowatt hours) to Utah Power & Light Company in Idaho primarily for transmission to, and resale in, Utah.

Idaho Power Company owns all or substantially all of the capital stock of, and controls the operations of, Nevada Power Company, an Idaho corporation which conducts an electric utility business by means of a transmission line which crosses the Idaho-Nevada boundary. Nevada Power Company makes all of its sales of electric energy in the State of Nevada. The aggregate sales of electric en-

ergy by Nevada Power Company in 1934 were approximately 1,000,000 kilowatt hours (all purchased from Idaho Power Company in Idaho) and its electric operating revenues were approximately $17,000. Application has been made to the Federal Power Commission for permission to transfer all the properties of Nevada Power Company to Idaho Power Company.

Electric Power & Light Corporation also owns all or substantially all of the common stock of Dallas Railway & Terminal Company, a corporation organized under the laws of Texas, which has for many years conducted and still conducts a transportation service in the City of Dallas, Texas. The operating revenues of said Company in 1934 were approximately $2,300,000.

Electric Power & Light Corporation also owns 61.58% of the outstanding voting securities of defendant United Gas Corporation. A description of the subsidiary companies of said United Gas Corporation is given in Exhibit III.

The statements of earnings, sales, and operations made for the year 1934 for the companies referred to in this Exhibit are for the last calendar year for which such statements are available, and are
198 typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

The above named direct and indirect subsidiaries of Electric Power & Light Corporation do not include certain minor subsidiaries holding land or conducting other businesses or "name-saving" companies or subsidiary companies now in the process of dissolution or other "shell" subsidiary companies, the corporate existence of which has been continued because of franchise problems, mortgage provisions, etc.

The corporate chart set forth on the next following page shows the relationships of the subsidiaries of Electric Power & Light Corporation herein described to that Company and to one another.

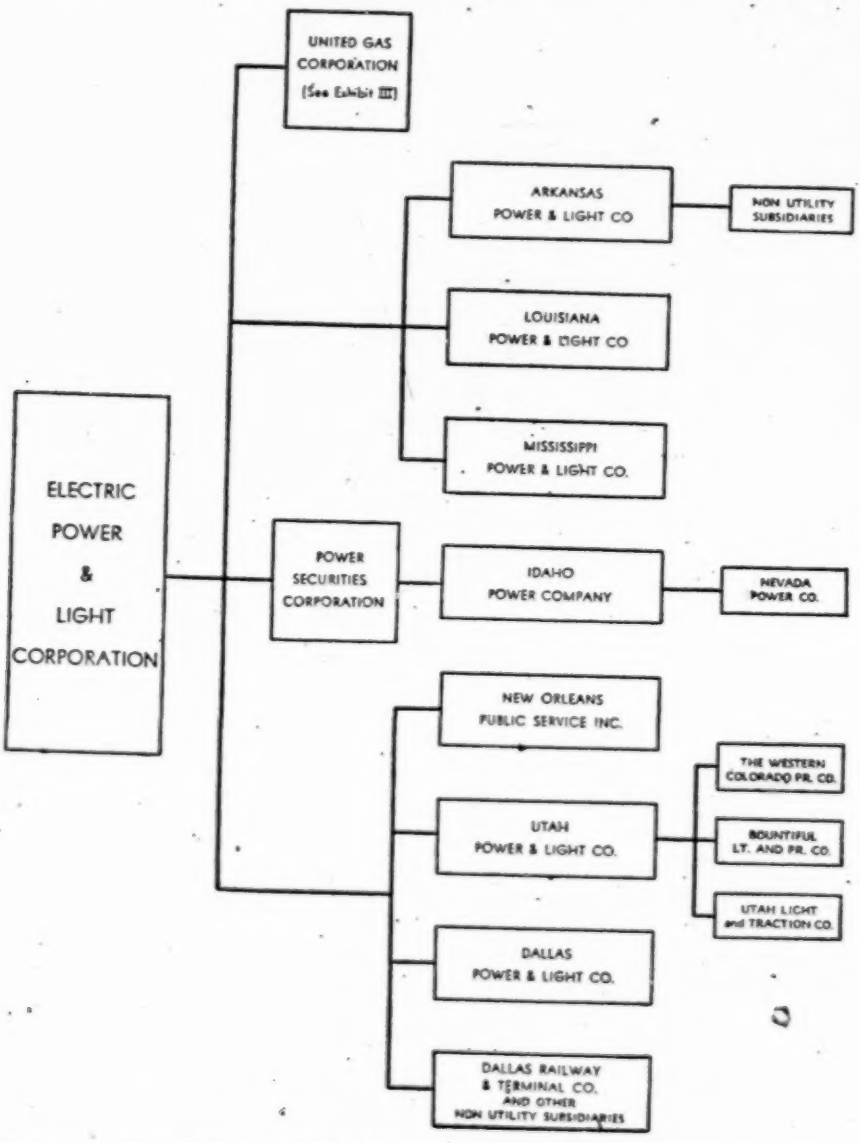
(Here follows 1 photo, folio 198½.)

Exhibit III to answer

Properties of, and Business Done by Subsidiaries of United Gas Corporation

United Gas Public Service Company, organized under the laws of Delaware in 1930 and with its principal office and place of business at Houston, Texas, has since January 1, 1931, carried on and still carries on the business of producing, purchasing, transporting, distributing, and selling natural gas by means of wells and other production facilities, pipe lines, and other transportation facilities and distribution systems in a territory which includes portions of the States of Texas, Louisiana, and Mississippi; the Company's pipe lines also extending into Alabama and Florida. In connection with the production of natural gas, and incident thereto, the Company

owns and operates gasoline extraction plants for the purpose of removing gasoline from natural gas, all of which are in Texas and Louisiana. Likewise, in connection with the production of natural gas, and incident thereto, said Company owns and operates oil-producing properties in Louisiana and certain of its subsidiaries own and operate oil-producing properties in Texas.



United Gas Public Service Company also owns all or substantially all of the voting securities of, and controls the operations of, Southern Gas Utilities, Inc., a Delaware corporation which owns natural gas production, transportation, and distribution properties in

199 the State of Texas; Northern Texas Utilities Company, a Delaware corporation which owns certain natural gas production, transportation and distribution properties, all within the State of Texas with the exception of one pipe line which crosses a corner of the State of Oklahoma; and Houston Gulf Gas Company, a Delaware corporation which owns certain natural gas production, transportation and distribution properties all within the State of Texas and which owns substantially all the outstanding voting securities of Houston Gas and Fuel Company, a Texas corporation which owns natural gas distribution properties in Houston, Texas.

The pipe lines of the Company and certain of its subsidiaries cross various boundaries of the states above indicated as well as the international boundary between the United States and the Republic of Mexico and substantial amounts of natural gas are transported across such boundaries, being commingled with gas produced in each of the states entered (and in the Republic of Mexico), except Oklahoma, Florida, and Alabama. The division of the aggregate natural gas business of the Company and its subsidiaries in the year 1934 may be indicated approximately as follows: Production and/or purchase: Texas, 75,400,000 thousand cubic feet; Louisiana, 118,600,000 thousand cubic feet; Mississippi, 7,500,000 thousand cubic feet; Mexico, 200,000 thousand cubic feet; Total, 201,700,000 thousand cubic feet; Sales at retail and wholesale: Texas, 76,400,000 thousand cubic feet; Louisiana, 100,200,000 thousand cubic feet; Mexico, 5,400,000 thousand cubic feet; Mississippi, 3,900,000 thousand cubic feet; Alabama, 550,000 thousand cubic feet; and Florida, 620,000 thousand cubic feet; Total, 187,070,000 thousand cubic feet; Operating revenues from gas sales: Texas, $14,400,000; Louisiana, $7,200,000; Mexico, $600,000; Mississippi, $510,000; Alabama, $180,000; and Florida, $110,000; Total, $23,000,000. In 1934, the Company transported across state boundaries for sale in a state other than that in which the gas was produced approximately 26,000,000 thousand cubic feet of natural gas. In that year it sold across state or international boundaries at wholesale for resale and at the pressure at which such gas was transported across such boundaries approxi-

mately 5,200,000 thousand cubic feet of natural gas. Its reve-

200 nues from such wholesale sales were approximately $310,000, or less than 1½% of its total revenues from the sale of natural gas in 1934. The Company also purchased in 1934 at pipe-line pressures approximately 13,500,000 thousand cubic feet of natural gas transported from Louisiana into Texas by a non-associate company. The revenues of United Gas Public Service Company and its said subsidiaries from sales of oil and natural gas gasoline in 1934 were approximately $1,490,000 and their total operating revenues from all sources in 1934 were approximately $24,700,000. There was a large increase in the oil revenues of such companies in 1935.

United Gas Public Service Company also owns directly 50% of the outstanding voting securities of Natural Gas Co., Inc., a Louisiana company which owns a natural gas distribution system in the State of Louisiana. United Gas Public Service Company also owns 24% of the outstanding voting securities of the Monroe Gas Company, which in turn owns the remaining 50% of the outstanding voting securities of Natural Gas Co., Inc.

United Gas Corporation also owns approximately 75% of the outstanding voting securities of Duval Texas Sulphur Company, a Texas corporation operating certain sulphur properties in the State of Texas, and all of the outstanding voting securities of Houston Gas Securities Company, a Delaware corporation which issued debentures in exchange for the bonds of Houston Gas and Fuel Company and which also owns certain debentures of United Gas Public Service Company.

United Gas Corporation also owns approximately 46% of the outstanding voting securities of Mississippi River Fuel Corporation, a Delaware corporation which is conducting and, for several years last past has conducted, a natural gas business consisting of the purchase of natural gas in the State of Louisiana and its transportation and sale at wholesale in the States of Louisiana, Arkansas, Missouri, and Illinois.

United Gas Corporation also owns, directly and indirectly, approximately 27% of the outstanding voting securities of El Paso Natural Gas Company, a Delaware Corporation, which for several years last past has carried on and still carries on, directly and through subsidiaries, the business of producing, purchasing, transporting, and distributing natural gas in the States of New Mexico, Texas, and Arizona and in the Republic of Mexico.

201 The statements of earnings, sales and operations made for the year 1934 for the companies referred to in this Exhibit are for the last calendar year for which such statements are available, and are typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

The above-named direct and indirect subsidiaries of United Gas Corporation do not include certain companies engaged in sundry non-utility businesses, "name-saving" companies, or subsidiaries now in the process of dissolution, or other "shell" subsidiaries, the corporate existence of which has been continued because of franchise problems, mortgage provisions, etc.

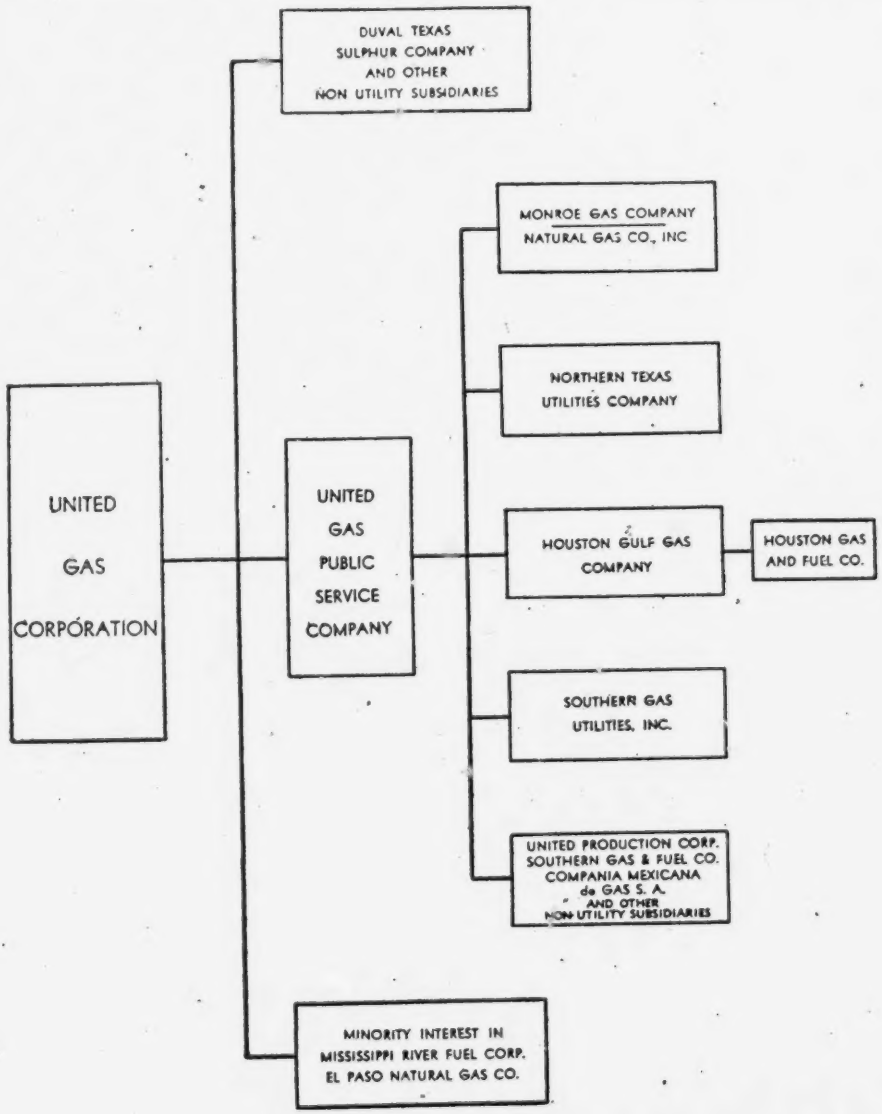
The corporate chart set forth on the next following page shows the relationships of the subsidiaries of United Gas Corporation to that Company and to one another.

(Here follows 1 photo, folio 201½.)

Exhibit IV to answer

Properties of, and Business Done by, Subsidiaries of National Power & Light Company

(a) Birmingham Electric Company, organized under the laws of Alabama in 1924 and having its principal office and place of business in Birmingham, Alabama, has for many years conducted and



still conducts an electric utility business by means of a distribution system located solely within the State of Alabama. Except during emergencies, the Company purchases in the State of Alabama

its entire requirements of electric energy from Alabama Power Company, a non-associate electric utility company. The aggregate sales of electric energy by Birmingham Electric Company for the year 1934 were approximately 190,000,000 kilowatt hours, and its electric operating revenues were approximately $4,000,000. The Company also conducts a steam heating service and a transportation service solely within the State of Alabama. The aggregate operating revenues of the Company, including the revenues from its electric utility business and its steam heating and transportation services, were approximately $5,900,000 for the year 1934.

(b) Carolina Power & Light Company, organized under the
202 laws of North Carolina in 1926 and having its principal office and place of business at Raleigh, North Carolina, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located within the states of North Carolina and South Carolina. Certain of the Company's transmission lines cross the North Carolina-South Carolina state boundary and substantial amounts of energy generated by the Company or obtained through purchase from, or interchange with, non-associate electric utility companies are transferred across said boundary over such lines for distribution to customers of the Company. Other transmission lines of the Company extend to the North Carolina-Tennessee boundary, where they are interconnected with transmission lines of Tennessee Public Service Company, an associate electric utility company and, through such company, with Appalachian Electric Power Company (a subsidiary company of American Gas and Electric Company); and also with other electric utility companies. Still other transmission lines of the Company extend to different points on the North Carolina-Virginia boundary, where they are interconnected with the transmission lines of said Appalachian Electric Power Company and with the transmission line of Roanoke River Power Company, an associate company. While the Company's principal business is the sale of electric energy at retail and at wholesale in the States of North Carolina and South Carolina, the Company sells a substantial amount of energy at wholesale to the said Tennessee Public Service Company, at the Tennessee boundary, and sells and interchanges substantial amounts of surplus energy, when available, with said Appalachian Electric Power Company at the Virginia boundary and also with the latter company and with other electric utility companies at the Tennessee boundary. Electric energy at times is delivered by the Company to the transmission line of said Roanoke River Power Company at one point on the North Carolina-Virginia boundary and is transmitted by the Roanoke River Power Company and redelivered to the Company at another point of interconnection on the North Carolina-Virginia boundary.

The division of the Company's electric business between the States of South Carolina and North Carolina, and the extent of its sale and interchanges at the North Carolina-Tennessee and the

203 North Carolina-Virginia state boundaries in 1934 are indicated by the following relations: Electric generating capacity installed and available under contract, South Carolina, 22%, North Carolina, 78%; Electric energy generated and purchased, South Carolina, 15%, North Carolina 65%, state boundaries 20%; Electric energy sales, South Carolina 8%, North Carolina 46%, state boundaries, 46%; Electric revenue, South Carolina, 18%, North Carolina 72%, state boundaries 10%; Electric customers, South Carolina, 22%, North Carolina 78%.

The aggregate sales of electric energy by the Company in the year 1934 were approximately 73,000,000 kilowatt hours in the State of South Carolina; approximately 427,000,000 kilowatt hours in the State of North Carolina; and approximately 431,000,000 kilowatt hours (largely surplus hydro-electric energy) in North Carolina-Tennessee and North Carolina-Virginia deliveries. The Company's aggregate deliveries of electric energy in 1934 from interstate transmission lines at wholesale for resale, at or across state boundaries or pursuant to interchange or other contracts under which deliveries are made in states other than North Carolina or South Carolina, were approximately 458,000,000 kilowatt hours (including large amounts of surplus and exchanged power and including the sales of 431,000,000 kilowatt hours referred to above) and the aggregate revenues therefrom were approximately $885,000 or approximately 9.5% of the Company's aggregate electric operating revenues of approximately $9,300,000 in 1934. The Company also transferred for its own account across the North Carolina-South Carolina boundary approximately 109,000,000 kilowatt hours, including approximately 9,000,000 kilowatt hours which are a part of the above 458,000,000 kilowatt hours delivered outside of North Carolina and South Carolina. The Company also renders transportation service in two cities in North Carolina and owns substantially all the capital stock of a non-utility subsidiary company which owns certain real estate and other property. The Company's aggregate operating revenues in the year 1934, including its revenues from its electric business and its transportation service, were approximately $9,600,000.

(c) Holston River Electric Company, organized under the laws of Tennessee in 1924 and having its principal office and place of business in Knoxville, Tennessee, has throughout its history
204 conducted, and still conducts, an electric utility business by means of transmission lines and distribution systems located solely within the State of Tennessee. The Company purchases its entire requirements of electric energy in Tennessee from Tennessee Public Service Company, an associate electric utility company, but not at an interstate transmission voltage. The aggregate sales of electric energy by the Company for the year 1934 were approximately 1,200,000 kilowatt hours and its electric operating revenues for said year were approximately $44,000.

(d) Houston Lighting & Power Company, organized under the laws of Texas in 1906, and having its principal office and place of business at Houston, Texas, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located, and operations carried on, solely within the State of Texas. The aggregate sales of electric energy by the Company for the year 1934 were approximately 420,000,000 kilowatt hours, and its electric operating revenues therefrom were approximately $8,400,000.

(e) Memphis Power & Light Company, organized under the laws of New Jersey in 1922 with its principal office and place of business at Memphis, Tennessee, has for many years conducted and still conducts an electric utility business by means of a generating plant, transmission lines and distribution systems located solely within the State of Tennessee and a gas utility business by means of a manufactured gas plant and a system for the distribution of manufactured and/or natural gas also located solely within the State of Tennessee. The Company's transmission lines extend to the Tennessee-Arkansas boundary and are there used for the purpose of supplying stand-by service for a small community served by another electric utility company in Arkansas and for interchanging electric energy by and with other electric utility companies having properties outside the State of Tennessee. Said lines also extend to the Tennessee-Mississippi boundary, where the Company sells electric energy to another electric utility company.

The Company, in the year 1934, sold to consumers in the State of Tennessee approximately 162,000,000 kilowatt hours, and the revenues therefrom were approximately $4,200,000. The aggre-
205 gate sales of electric energy over the Company's transmission lines extending to Tennessee-Arkansas and Tennessee-Mississippi boundaries were approximately 990,000 kilowatt hours in the calendar year 1934 and the revenues therefrom were approximately $15,000. The Company has a contract entitling it to receive standby service over said line extending to the Tennessee-Arkansas boundary, but in the year 1934 did not actually purchase any energy under such contract. The Company also transferred over its own lines in Tennessee energy received by it at a state boundary for delivery at another point or points at a state boundary for the account of the company from which such energy was received. The amount of electric energy so transferred in the calendar year 1934 was approximately 22,000,000 kilowatt hours.

The aggregate operating revenues of the Company, including the revenues from the gas and electric businesses done by the Company, were approximately $6,400,000 for the year 1934.

(f) Roanoke River Power Company, organized under the laws of Virginia in 1925 and having its principal office and place of business at Richmond, Virginia, owns an undeveloped hydro-electric site

and lands adjacent thereto located in the States of Virginia and North Carolina. The Company also owns an electric transmission line located solely in Virginia and used for the purpose of transferring energy through Virginia between two points on the Virginia-North Carolina boundary for the account of Carolina Power & Light Company, an associate electric utility company, the aggregate amount of electric energy so transferred during the year 1934 having been approximately 78,000,000 kilowatt hours. Roanoke River Power Company neither buys nor sells electric energy and has no other electric business than the ownership and operation of said transmission line.

(g) Tennessee Public Service Company, organized under the laws of Maine in 1925 and having its principal office and place of business at Knoxville, Tennessee, has throughout its history conducted, and still conducts, an electric utility business by means of generating stations, transmission lines and distribution systems located solely within the State of Tennessee. Certain of said transmission lines extend to the Tennessee-North Carolina boundary,
206 where they interconnect with transission lines owned and maintained by the Carolina Power & Light Company, an associate electric utility company. The Company purchases substantially all of its requirements of electric energy from Carolina Power & Light Company by means of such interconnections. All of the electric energy so purchased and generated by the Company is distributed at retail in Tennessee by the Company and by Holston River Electric Company, an associate electric utility company which purchases from it a small amount of electric energy. From time to time, the Company transmits over its own lines large amounts of electric energy between such points of interconnection with Carolina Power & Light Company and points of interconnection with the lines of other electric utility companies in Tennessee. The aggregate sales of electric energy by the Company for the year 1934 were approximately 85,000,000 kilowatt hours, and its electric operating revenues were approximately $2,200,000. The Company also conducts a transportation service solely within the State of Tennessee. The aggregate operating revenues of the Company, including the revenues from its electric utility service and its transportation service, were approximately $2,800,000 for the year 1934.

(h) West Tennessee Power & Light Company, organized under the laws of the State of Florida in 1928 and having its principal office and place of business in Jackson, Tennessee, has for many years conducted, and still conducts, an electric utility business by means of generating plants, transmission lines and distribution systems, and a natural gas utility business by means of gas distribution systems and a stand-by gas plant, all of its property being located, and all of its operations conducted, solely within the State of Tennessee. The Company purchases in Tennessee approximately 65% of its electric energy from Memphis Power & Light Company,

an associate electric utility company. The aggregate sales of electric energy by the Company for the year 1934 were approximately 13,600,000 kilowatt hours and its electric operating revenues were approximately $530,000. The Company also conducts a transportation service and renders water service and ice service solely within the State of Tennessee. The aggregate operating revenues of the Company, including the revenues from its electric and gas
207 utility service and water transportation and ice businesses, were approximately $760,000 for the year 1934.

National Power & Light Company also owns 129,720 shares of the $6 Preferred Stock and 2,918,082 shares of the Common Stock (constituting more than 99 per centum of the outstanding voting securities thereof) of:

(i) Lehigh Power Securities Corporation, a corporation organized and existing under the laws of Delaware which owns directly or indirectly all or substantially all of the common stock of the following electric and gas utility companies which are conducting, and for several years last past have conducted, an electric or gas utility business in Pennsylvania as hereinafter described.

(i) (1) Lehigh Valley Transit Company, organized under the laws of the State of Pennsylvania in 1905 and with its principal office and place of business in Allentown, Pennsylvania, has for many years rendered and still renders transportation service in various communities in the State of Pennsylvania, such transportation service constituting its principal business. This Company also owns a steam-electric generating station which has been operated from time to time as stand-by equipment, as well as certain electric distribution lines, all located solely within the State of Pennsylvania, over which it distributes electric energy for its own uses and for delivery to Pennsylvania Power & Light Company, an associate electric utility company.

Lehigh Valley Transit Company also owns all or substantially all of the capital stock of Easton Consolidated Electric Company, a New Jersey corporation, which in turn owns, among other securities, all the capital stock of The Edison Illuminating Company of Easton, which in 1900 leased its electric distribution systems in and adjacent to the City of Easton, Pennsylvania, to the Metropolitan Edison Company under an agreement terminating in 1999.

Lehigh Valley Transit Company also owns all or substantially all the capital stock of certain subsidiary companies owning and operating motor buses and amusement park, toll bridge, and other properties located and operated solely in Pennsylvania, except for certain incidental bus service across the Pennsylvania-New Jersey boundary (the aggregate revenues from which were approximately $74,000 in 1934), and one tract of land located in New Jersey. The aggregate operating revenues of Lehigh Valley Transit
208 Company and all of its subsidiary companies in the year 1934 were approximately $2,400,000.

On October 30, 1935, Lehigh Valley Transit Company and Easton Transit Company, one of its subsidiaries owning facilities for transportation service, filed petitions in a proceeding in the United States District Court for the Eastern District of Pennsylvania for reorganization under Section 77B of the Bankruptcy Act as amended for the purpose of extending certain maturing obligations. Said proceedings are still pending in said Court and neither of said companies has received a final discharge.

(i) (2) Pennsylvania Power & Light Company, organized under the laws of Pennsylvania in 1920 and with its principal office and place of business at Allentown, Pennsylvania, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within Pennsylvania and a gas utility business by means of manufactured gas plants and systems for the transmission and distribution of manufactured and/or natural gas, such plants and systems being located solely within Pennsylvania. One of the Company's transmission lines extends to the Pennsylvania-New Jersey boundary and is used for the purpose of interchanging electric energy with a non-associate electric utility company having properties in the State of New Jersey.

The aggregate deliveries and receipts of electric energy between the Company and said non-associate electric utility company having properties in the State of New Jersey were, respectively, approximatly 26,000,000 kilowatt hours and 18,000,000 kilowatt hours in the year 1934. The Company also purchased in the year 1934 at the Pennsylvania-New York boundary, for an isolated distribution system in Pennsylvania approximately 13,000 kilowatt hours, the aggregate revenues from the sale of which in that year were $540. The Company made no other interstate purchases or sales. In 1935 the Company extended its lines to this particular community and the state boundary purchase was discontinued. The aggregate sales of electric energy by the Company in Pennsylvania were approximately 1,300,000,000 kilowatt hours in the year 1934 and its aggregate electric operating revenues were approximately $31,600,000.

209 The Company has also carried on for a number of years, and still carries on, the business of rendering steam heating service in two communities in Pennsylvania. Its aggregate operating revenues, including the revenues from its electric, gas and steam heating businesses, were approximately $34,000,000 for the year 1934.

Pennsylvania Power & Light Company also owns all, or substantially all, of the outstanding voting securities of and controls the operations of, the following companies, all the properties of which are located, and all the operations of which are conducted, solely within Pennsylvania: (1) Lehighton Electric Light and Power Company, a Pennsylvania corporation which carries on an electric utility business by means of a distribution system; (2) North Branch Development Company, a Pennsylvania corporation which carries on

a natural gas production business by means of wells and other production facilities and (3) Susquehanna Gas Company, a Pennsylvania corporation which owns certain natural gas transmission lines and which transmits natural gas from North Branch Development Company to Pennsylvania Power & Light Company. Pennsylvania Power & Light Company also owns 50 per centum of the capital stock of Stanton Operating Company, which is employed by Pennsylvania Power & Light Company and The Scranton Electric Company to furnish the labor and materials required in the operation of an electric generating plant near Pittston, Pennsylvania, approximately one-half of which is owned by Pennsylvania Power & Light Company itself. Pennsylvania Power & Light Company likewise owns directly and indirectly approximately 27 per centum of the capital stock of Conestoga Transmission Company, a Pennsylvania corporation which owns a transmission line, located solely within Pennsylvania, held and operated by Pennsylvania Power & Light Company under the provisions of a 999-year lease.

Pennsylvania Power & Light Company also owns all or substantially all of the capital stock of certain subsidiary companies rendering water and other services, holding land and carrying on certain other businesses solely in Pennsylvania, except for certain relatively small parcels of land held in New Jersey adjacent to Pennsylvania.

210 National Power & Light Company also owns all or substantially all of the stock of South Texas Utilities Company, a Texas company, which conducts a water and ice service solely within the State of Texas. The operating revenues of said Company in 1934 were approximately $86,000.

The statements of earnings, sales, and operations made for the year 1934 for the companies referred to in this Exhibit are for the last calendar year for which such statements are available, and typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

The above named direct and indirect subsidiaries of National Power & Light Company do not include certain minor companies holding land or conducting other businesses or "name-saving" companies or subsidiary companies now in the process of dissolution or other "shell" subsidiary companies, the corporate existence of which has been continued because of franchise problems, mortgage provisions, etc.

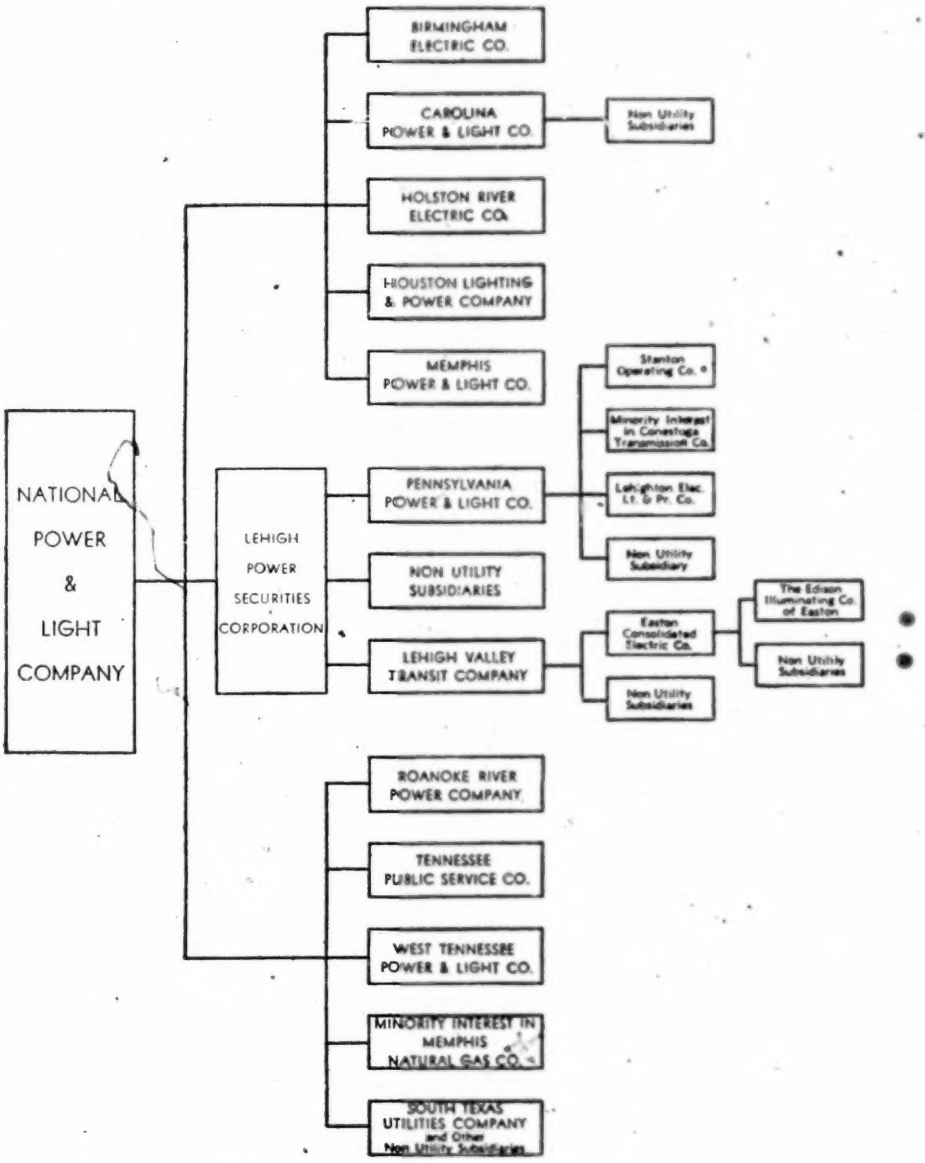
The corporate chart set forth on the next following page shows the relationships of the subsidiaries of National Power & Light Company herein described to that Company and to one another.

(Here follows 1 photo, folio 210½.)

Exhibit V to answer

Properties of, and Business Done by, Subsidiaries of American Gas and Electric Company

(a) Atlantic City Electric Company, organized under the laws of New Jersey in 1924 with its principal office and place of business at Atlantic City, New Jersey, has since its organization conducted and still conducts an electric utility business by means of generating



* 50% OWNED BY PENNSYLVANIA POWER & LIGHT COMPANY; REMAINING 50% OWNED BY THE SCRANTON ELECTRIC COMPANY

plants, transmission lines and distribution systems located solely within the State of New Jersey. The aggregate sales of electric energy by the Company in the year 1934, were approximately 165,000,000 kilowatt hours, and the operating revenues therefrom were approximately $6,450,000. The Company also has carried on for a number of years, and still carries on, the business of furnishing
211 heating service in the city of Atlantic City, New Jersey. The aggregate operating revenues of the Company, including the revenues from its electric business and heating service, were approximately $6,550,000 for the year 1934.

The Company owns 50 per centum of the capital stock of the Deepwater Operating Company and 50 per centum of the capital stock of South Pennsgrove Realty Company. The Deepwater Operating Company owns no utility assets and is engaged solely in the operation of the electric generating plant at Deepwater, near Pennsgrove, New Jersey, approximately one-half of which is owned by the Atlantic City Electric Company. Deepwater Operating Company sells steam at the wall of said electric generating plant and electric energy at the plant substation to one industrial plant for use wholly within the State of New Jersey and furnishes electric energy to the Atlantic City Electric Company and to Deepwater Light and Power Company, a non-associate electric utility company which owns the other half of the said electric generating plant. The South Pennsgrove Realty Company holds presently idle land adjacent to the Deepwater generating plant.

(b) Indiana General Service Company, organized under the laws of Indiana in 1913 and with its registered office at Alexandria, Indiana and its principal place of business at Marion, Indiana, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located solely within the state of Indiana. The Company, in the year 1934, generated with its own facilities, and purchased from sources within the state of Indiana, approximately 146,000,000 kilowatt hours of electric energy, all for sale to consumers in the state of Indiana, and the operating revenues therefrom were approximately $2,900,000. The Company also has carried on for a number of years, and still carries on, the business of furnishing steam or hot water heating service in various communities within the state of Indiana. The aggregate operating revenues of the Company, including the revenues from heating service, were approximately $3,075,000, for the year 1934.

(c) Indiana & Michigan Electric Company, organized under the laws of Indiana in 1925 and with its principal office and place of business at South Bend, Indiana, has since its organization
212 conducted, and still conducts, an electric utility business by means of generating plants, transmission lines, and distribution systems located within the States of Indiana and Michigan. The Company owns certain transmission lines which cross the Indiana-

Michigan boundary. Substantial amounts of electric energy are transmitted by the Company across such state boundary and are ultimately sold to retail customers of the Company or at wholesale. The Company also has certain transmission lines extending to the Indiana-Ohio boundary, which are used for the purpose of exchanging electric energy with and receiving electric energy from an associate electric utility company having properties outside the State of Indiana.

The division of the Company's electric business between the States of Indiana and Michigan in 1934 is indicated by the following relations: Electric Generating Capacity: Indiana, 90%; Michigan, 10%. Electric Energy Generated and Purchased: Indiana, 19%; Michigan, 7%; at state boundaries from other states, 74%. Electric Energy Sales: Indiana, 86%; Michigan, 12%; at state boundaries 2%. Electric Revenue: Indiana, 77%; Michigan, 22%; at state boundaries, 1%. Customers: Indiana, 70%; Michigan, 30% except two customers at state boundaries. The aggregate sales of electric energy by the Company in the year 1934 were approximately 389,000,000 kilowatt-hours in the State of Indiana, with revenues therefrom of approximately $4,900 000; approximately 57,000,000 kilowatt-hours in the State of Michigan, with revenues therefrom of approximately $1,450,000; and approximately 8,242,000 kilowatt-hours at state boundaries, with revenues therefrom of approximately $60,000. The Company in 1934 transferred to or across state boundaries for its own account or for sale at wholesale approximately 60,000,000 kilowatt-hours. It sold at or across state boundaries at wholesale for resale 8,242,000 kilowatt-hours (pratically all of which was delivered to non-associate companies), or less than 2% of the total number of kilowatt-hours which it sold in that year.

(d) The Ohio Power Company, organized under the laws of Ohio in 1907, with its principal office and place of business at Canton, Ohio, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems in Ohio and one generating station
213 located on the West Virginia side of the Ohio River, which station is connected to the Company's transmission lines in Ohio. Substantial amounts of electric energy are transmitted by the Company from its West Virginia generating station, for itself and for account of others, across the Ohio-West Virginia boundary and are ultimately delivered to others or sold to retail or wholesale customers of the Company. The Company also has certain transmission lines extending to the Ohio-Indiana boundary, to the Ohio-Kentucky boundary, and to the Ohio-West Virginia boundary, which are used for the purpose of selling electric energy to, exchanging electric energy with and receiving electric energy from, associate electric utility companies having properties outside the State of Ohio.

The division of the Company's electric business between the states of Ohio and West Virginia in 1934 is indicated by the following relations: Electric Generating Capacity, Ohio, 76%; West Virginia,

24%. Electric Energy Generated and Purchased, Ohio, 69%; West Virginia, 23%; at state boundaries, 8%. Electric Energy Sales, Ohio, 49%; West Virginia, 5%; in West Virginia for customers in Ohio, 19%; at state boundaries, 27%. Electric Revenue, Ohio, 84%; West Virginia, 5%; in West Virginia for customers in Ohio, 7%; at state boundaries, 4%. Customers, Ohio, approximately 215,000 customers; West Virginia or at state boundaries, 5 customers. The aggregate sales of electric energy by the Company in the year 1934 were approximately 887,000,000 kilowatt-hours in the State of Ohio, with revenues therefrom of approximately $16,400,000; approximately 98,000,000 kilowatt-hours in the State of West Virginia, with revenues therefrom of approximately $800,000; approximately 340,000,000 kilowatt-hours in West Virginia for customers in Ohio with revenues therefrom of approximately $1,460,000; and approximately 490,000,000 kilowatt-hours at state boundaries with revenues therefrom of approximately $890,000. The Company in 1934 transferred to or across state boundaries for its own account, for the account of others or for sale to others approximately 838,000,000 kilowatt hours. Of this amount it sold at or across state lines at wholesale for resale approximately 490,000,000 kilowatt hours, all of which was delivered to associate companies, and transmitted across state boundaries for the account of others approximately 340,000,000 kilowatt hours. The balance of the electric energy transmitted by the Company to or across state boundaries was sold to retail customers of the Company. The Company also conducts a steam heating business in several communities and a water service in one community in the State of Ohio. The aggregate operating revenues of the Company, including revenues from its electric business, and from its heating and water service, were approximately $19,700,000 for the year 1934.

214

The Company owns 50 per centum of the capital stock of Windsor Power House Coal Company and 50 per centum of the capital stock of Beech Bottom Power Company, Inc. Beech Bottom Power Company, Inc., owns no utility assets and is engaged solely in the operation of an electric generating plant at Power, West Virginia, approximately one-half of which is owned by The Ohio Power Company. Beech Bottom Power Company, Inc., furnishes electric energy to The Ohio Power Company at the said electric generating plant. Such electric energy is either delivered to others at the said electric generating plant, for distribution or use in West Virginia and in Ohio, or transmitted by The Ohio Power Company from West Virginia into Ohio for distribution. Beech Bottom Power Company, Inc., also furnishes energy to the West Penn Power Company, a non-associate electric utility company which owns the other half of said electric generating plant. The Windsor Power House Coal Company owns all the capital stock of Windsor Coal Company. The Windsor Power House Coal Company and the Windsor Coal Company own and/or operate a "captive" coal mine at Power, West Virginia, which furnishes fuel to the adjacent electric generating plant.

(e) The Scranton Electric Company, organized under the laws of Pennsylvania in 1928 with its principal office and place of business at Scranton, Pennsylvania, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Pennsylvania. The aggregate sales of electric energy by the Company for the year 1934 were approximately 227,000,000 kilowatt-hours, and the operating revenues therefrom were approximately $5,750,000. The Company also has carried on for a number of years and still carries on the business of furnishing
215 steam heating service in the city of Scranton, Pennsylvania.

The aggregate operating revenues of the Company, including revenues from its electric business and heating service, were approximately $6,175,000 for the year 1934.

The Company owns fifty per cent. of the capital stock of Stanton Operating Company, which company owns no utility assets and is employed by The Scranton Electric Company and Pennsylvania Power & Light Company to furnish the labor and materials required in the operation of an electric generating plant near Pittston, Pennsylvania, approximately one-half of which is owned by The Scranton Electric Company. Stanton Operating Company furnishes electric energy to The Scranton Electric Company and to the Pennsylvania Power & Light Company, an electric utility company, which owns the other half of said electric generating plant.

(f) Wheeling Electric Company, organized under the laws of West Virginia in 1905 with its principal office and place of business at Wheeling, West Virginia, has since its organization conducted and still conducts an electric utility business by means of a generating plant, transmission lines, and distribution systems located within the States of West Virginia and Ohio. The Company owns certain transmission lines in West Virginia which extend to the West Virginia-Ohio boundary, and owns distribution lines which cross the West Virginia-Ohio boundary. The aggregate sales of electric energy by the Company in West Virginia and Ohio in 1934 were approximately 73,000,000 kilowatt-hours in the case of West Virginia, with operating revenues therefrom of approximately $2,000,000, and approximately 8,000,000 kilowatt-hours in the case of Ohio, with operating revenues therefrom of approximately $300,000. All of the electric energy sold by the Company in Ohio was generated by the Company or by The Ohio Power Company in West Virginia and transmitted to Ohio by the Company or by The Ohio Power Company for the account of the Company.

(g) Appalachian Electric Power Company, organized under the laws of Virginia in 1926 and having its principal office and place of business at Roanoke, Virginia, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems
216 located within the states of Virginia and West Virginia and, since the end of 1934, a short length of transmission line in

the state of Tennessee. The Company owns certain transmission lines which cross the Virginia-West Virginia boundary and another transmission line which crosses the Virginia-Tennessee boundary. Substantial amounts of electric energy are transmitted by the Company across such state boundaries and are ultimately sold to retail customers of the Company or at wholesale.

The Company also has transmission lines extending to the West Virginia-Ohio boundary, to the West Virginia-Kentucky boundary, to the Virginia-Kentucky boundary, and to the Virginia-North Carolina boundary, which are used for the purpose of selling electric energy to, exchanging electric energy with, and receiving electric energy from associate electric utility companies and Carolina Power & Light Company, an electric utility company having properties outside the states of Virginia and West Virginia.

The division of the Company's electric business between the states of Virginia and West Virginia in 1934 is indicated by the following relations: Electric Generating Capacity: West Virginia, 61%; Virginia, 39%; Electric Energy Generated and Purchased: West Virginia, 45%; Virginia, 26-; at state boundaries, 29%; Electric Energy Sales: West Virginia, 58%; Virginia, 19%; at state boundaries, 23%; Electric Revenue: West Virginia, 68%; Virginia, 25%; at state boundaries, 7%; Customers: West Virginia, 62%; Virginia, 38%, except two customers at state boundaries.

The aggregate sales of electric energy by the Company in the calendar year 1934 were approximately 810,000,000 kilowatt hours in the State of West Virginia, with revenues therefrom of approximately $12,100,000; approximately 250,000,000 kilowatt hours in the state of Virginia, with revenues therefrom of approximately $4,400,000; and approximately 334,000,000 kilowatt hours at state boundaries, with revenues therefrom of approximately $1,100,000. The Company transferred to or across state boundaries for its own account or for sale to others in 1934 approximately 972,000,000 kilowatt hours. Of this amount it sold at or across state lines at wholesale for resale approximately 334,000,000 kilowatt hours, all of
217 which was delivered to associate companies. Of this amount, it also delivered to Carolina Power & Light Company itself at the Virginia-North Carolina boundary or to Tennessee Public Service Company at Kingsport, Tennessee, for the account of said Carolina Power & Light Company, approximately 16,000,000 kilowatt hours of electric energy. In 1935 the Company made sales of electric energy within the State of Tennessee, which, in 1934, were made as, and are shown herein as, sales at a state boundary, and in that year amounted to approximately 30,000,000 kilowatt hours, with revenues therefrom of approximately $75,000.

Appalachian Electric Power Company owns all of the capital stock and all of the bonds of the following electric utility companies which are conducting, and for several years last past have conducted eelctric utility businesses in the states hereinafter mentioned as hereinafter described:

(g) (1) Kentucky and West Virginia Power Company, Inc., organized under the laws of Kentucky in 1919 and with its principal office and place of business at Ashland, Kentucky, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Kentucky. Certain of the Company's transmission lines extend to the Kentucky-Virginia boundary, to the Kentucky-West Virginia boundary and to the Kentucky-Ohio boundary, and are used for the purpose of exchanging electric energy with and receiving electric energy from associate electric utility companies having properties outside the State of Kentucky.

The Company, in the year 1934, generated with its own facilities approximately 38,000,000 kilowatt-hours and purchased approximately 138,000,000 kilowatt-hours generated outside the State of Kentucky, all for sale to consumers in the State of Kentucky. The operating revenues from such electric energy sales were approximately $2,700,000, and the amount paid for energy purchased from sources outside the State of Kentucky, in 1934, was approximately $870,000. The Company in 1934 delivered approximately 6,000,000 kilowatt hours of electric energy to associate companies for resale in states other than Kentucky.

(g) (2) Kingsport Utilities, Incorporated, organized under
218 the laws of Virginia in 1917 and with its principal office and place of business at Kingsport, Tennessee, has since its organization conducted and still conducts an electric utility business by means of a generating plant, transmission lines and distribution systems located solely within the State of Tennessee. One of the Company's distribution lines extends to the Tennessee-Virginia boundary, at which point electric energy is sold to an associate electric utility company having properties outside the State of Tennessee. In the year 1934 such sales aggregated approximately 2,000 kilowatt-hours, with revenues therefrom of less than $100.

The Company in the year 1934 purchased approximately 31,500,000 kilowatt-hours generated outside of the State of Tennessee, all (except a negligible amount to Virginia) for sale to consumers in the State of Tennessee, and the operating revenues therefrom were approximately $430,000, and the net amount paid for energy purchased from sources outside the State of Tennessee in 1934 was approximately $75,000.

Appalachian Electric Power Company also owns all of the capital stock of the West Virginia Power Company, a corporation organized under the laws of West Virginia in 1912 which owns certain real estate and rights and has made sundry investigations, etc. in connection with proposed hydro-electric developments on the Kanawha River in the State of West Virginia, and all the capital stock of the Radford Limestone Company, organized under the laws of Virginia in 1930, which operates on a commercial basis a stone quarry

near Radford, Virginia, owned by the Appalachian Electric Power Company as part of a proposed hydro-electric development.

American Gas and Electric Company also owns all of the outstanding stock of the following companies:

Twin Branch Railroad Company, a corporation organized under the laws of Indiana in 1925 which has for many years conducted and still conducts a railroad service in the vicinity of Michawaka, Indiana. The operating revenues of said Company, in 1934, were approximately $12,000.

St. Joseph Heating Company, a corporation organized under the laws of Indiana in 1912, which for many years conducted and still conducts a steam heating service in the city of South Bend, Indiana. The operating revenues of said Company, in 1934, were approximately $100,000.

219 Southern Ohio Public Service Company, a corporation organized under the laws of Ohio in 1925, which for many years has owned and now owns an electric generating plant in the city of Zanesville, Ohio, the entire output of which is sold at wholesale in Ohio to The Ohio Power Company, an associate company. The gross operating revenue of said Company in the year 1934 was less than $12,000.

The Kanawha Valley Power Company, a corporation organized under the laws of West Virginia in 1931, which operates electric generating plants in West Virginia and sells the entire output of electric energy from such plants to Appalachian Electric Power Company, an associate company.

American Gas and Electric Company also owns fifty per cent of the stock of the West Pittston-Exeter Railroad Company, a corporation organized under the laws of Pennsylvania in 1925, which has for many years conducted and still conducts a railroad service in the vicinity of Pittston, Pennsylvania. The operating revenues of said Company, in 1934, were approximately $64,000.

The statements of earnings, sales, and operations made for the year 1934 for the companies referred to in this Exhibit are for the last calendar year for which such statements are available, and are typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

The above named direct and indirect subsidiaries of American Gas and Electric Company do not include certain minor subsidiary companies holding land or conducting other businesses, or subsidiary companies now in the process of dissolution or other "shell" subsidiary companies, the corporate existence of which has been continued because of mortgage provisions, etc.

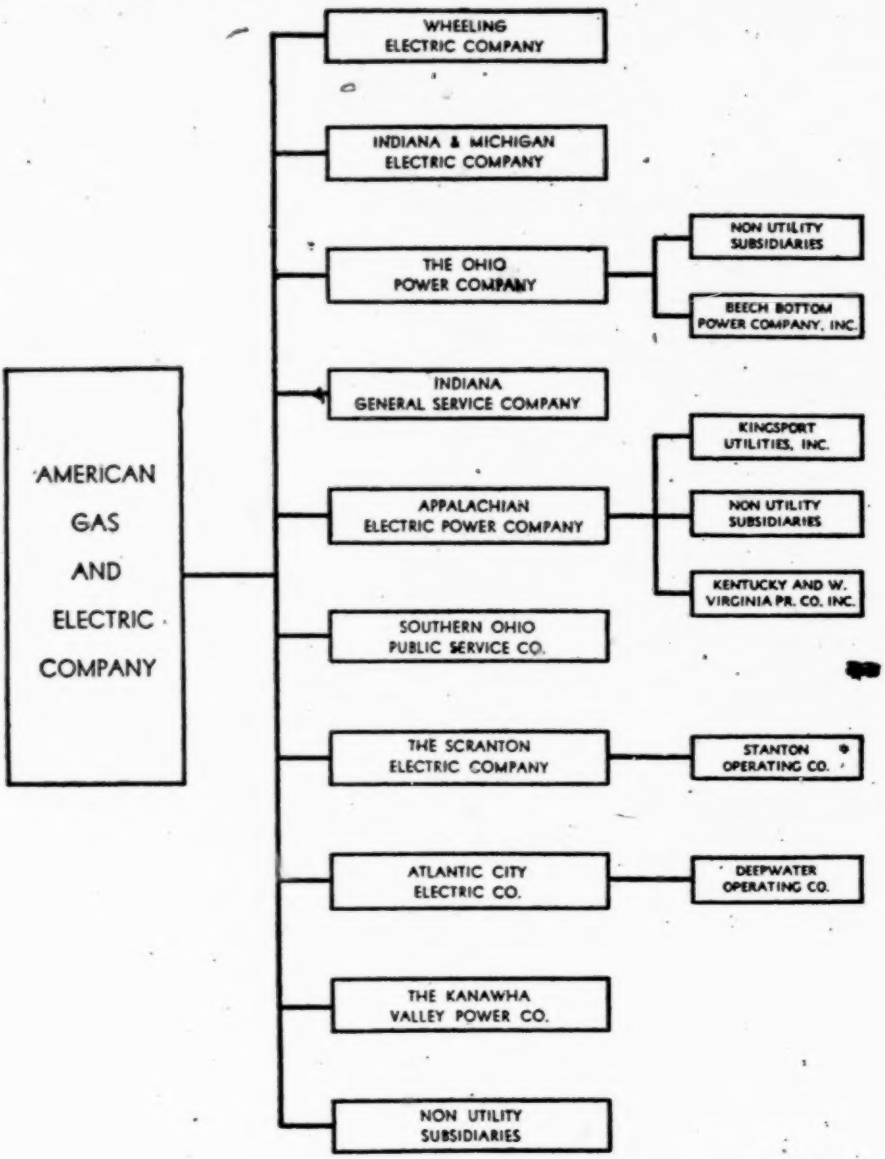
The corporate chart set forth on the next following page shows the relationships of the subsidiary companies of American Gas and Electric Company herein described to that Company and to one another.

(Here follows 1 photo., folio 219½.)

220 *Exhibit VI to answer*

Statement of Capitalization of Holding Company Defendants (Other Than Defendant Electric Bond and Share Company) and the Voting Stock Ownership of Defendant Bond and Share in Such Companies as of November 30, 1935

Defendant American Power & Light Company has outstanding $43,420,500 principal amount of Gold Debenture Bonds, American 6% Series, due March 1, 2016; $4,159,000 principal amount of the



6% Gold Debenture Bonds, Series A, due March 1, 2022, of Southwestern Power & Light Company assumed by the American Company; 793,581-2/10ths shares of Preferred Stock ($6), (including 37-2/10ths shares represented by outstanding scrip), 978,444 shares of $5 Preferred Stock, and 3,008,511-27/50ths shares of Common Stock (including 3,101-27/50ths shares represented by outstanding scrip). Each share of stock of all classes has equal voting power. Defendant Bond and Share owns 51,840 shares of the $5 Preferred Stock and 937,213 shares of the common stock of the defendant American Company, constituting 20.70 per centum of the outstanding voting securities of said company.

Defendant Electric Power & Light Corporation has outstanding $31,000,000 principal amount of Gold Debentures, 5% Series, due 2030; 514,174 shares of $7 Preferred Stock, 255,430⅔ shares of $6 Preferred Stock (including 4⅔ shares represented by outstanding scrip); 83,539 shares of Second Preferred Stock, Series A, ($7); 3,418,961½ shares of Common Stock and Option Warrants to purchase 569,654 shares of Common Stock. Each share of $7 Preferred Stock $6 Preferred Stock and Common Stock has equal voting power. Defendant Bond and Share owns 485 shares of the $7 Preferred Stock and 1,976,638 shares of the Common Stock of the defendant Electric Company, constituting 47.20 per centum of the outstanding voting securities of said Company. In addition, defendant Bond and Share owns 13,905 shares of said Second Preferred Stock, Series A, ($7) and 393,408 of said Option Warrants of said Electric Company.

Defendant Power Securities Corporation has outstanding $4,524,-
100 principal amount of Collateral Trust Gold Bonds, Ameri-
221 can 6% Series due June 1, 1949; 58,054 shares of Second Pre-
ferred ($6) Stock and 150,000 shares of Common Stock. Each share of common stock and second preferred stock has equal voting power. Defendant Bond and Share owns none of the outstanding voting securities of said Power Securities Corporation, but defendant Electric Company owns all of said outstanding voting securities. In addition, defendant Electric Company owns $1,874,900 of the above mentioned Collateral Trust Gold Bonds.

Defendant United Gas Corporation has outstanding $21,250,000 principal amount of 6% Notes due July 20, 1936; a 6% Demand Note in the principal amount of $25,925,000, a 6% Note due November 30, 1938, in principal amount of $3,000,000; 449,822 shares of $7 Preferred Stock; 884,680 shares of $7 Second Preferred Stock, 7,818,959 shares of Common Stock and Option and Stock Purchase Warrants to purchase 4,867,982 shares of Common Stock. Each share of $7 Second Preferred Stock is entitled to three votes and each share of common stock is entitled to one vote. Defendant Bond and Share owns said 6% Demand Note for $25,925,000, said 6% Note for $3,000,000; 17,310 shares of the $7 Preferred Stock, 752,666 shares of the Common Stock and 151,005 of the Option Warrants of said United Company, constituting 7 percentum of the outstanding

voting securities of said Company, while the defendant Electric Company owns 884,610 shares of the $7 Second Preferred Stock and 3,795,086 shares of the Common Stock of said United Company, constituting 61.58 percentum of the outstanding voting securities of said Company.

Defendant National Power & Light Company has outstanding $9,500,000 principal amount of Six Per Cent Gold Debentures, Series A, due August 1, 2026; $15,000,000 principal amount of Five Per Cent Gold Debentures, Series B, due May 1, 2030, 279,716 shares of $6 Preferred Stock and 5,456,117 shares of Common Stock. Each share of common stock is entitled to one vote. Defendant Bond and Share owns 2,540,438 shares of the common stock of said National Company, constituting 46.56 percentum of the outstanding voting securities of said Company.

Defendant Lehigh Power Securities Corporation has outstanding $25,000,000 principal amount of Six Per Cent Gold Debentures, Series A, due February 1, 2026; $480,000 principal amount of the Fifty-Year Five Per Cent Collateral Trust Mortgage Gold
222 Bonds, due July 1, 1951, of Lancaster County Railway and Light Company assumed by the Lehigh Company; 130,000 shares of $6 Preferred Stock and 2,928,280 shares of Common Stock. Each share of stock of all classes has equal voting power. Defendant Bond and Share owns none of the outstanding voting securities of said Lehigh Company but defendant National Company owns 129,723 shares of the $6 Preferred Stock and 2,918,082 shares of the Common Stock of said Lehigh Company, constituting more than 99 per centum of the outstanding voting securities of said Company.

Defendant Easton Consolidated Electric Company has outstanding $1,237,000 principal amount of Collateral Trust 5% Gold Bonds, due May 1, 1949, and 30,000 shares of capital stock. Defendant Bond and Share owns none of the outstanding voting securities of said defendant Easton Consolidated Electric Company but Lehigh Valley Transit Company (98.18% of the outstanding voting securities of which are owned by defendant Lehigh Company) owns 99.96% of said capital stock of defendant Easton Consolidated Electric Company. In addition, Lehigh Valley Transit Company owns $991,000 principal amount of the above mentioned Collateral Trust Gold Bonds and defendant Lehigh Company owns $32,500 principal amount of such bonds.

Defendant American Gas and Electric Company has outstanding $50,000,000 principal amount of 5% Debentures, due 2028. It also has outstanding, exclusive of stock reacquired and held in its treasury, 355,623 shares of $6 Preferred Stock and $4,482,737 31/50 shares of Common Stock. Each share of preferred stock and common stock has equal voting power. Defendant Bond and Share owns 846,985 shares of the common stock of said American Gas, constituting 17.51 per centum of the outstanding voting securities of said Company.

223 In the District Court of the United States for the Southern District of New York

In Equity. No. E81–378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION, AND UNITED GAS CORPORATION, DEFENDANTS; AND POWER SECURITIES CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, AND EASTON CONSOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS

Upon the annexed stipulation it is hereby

Ordered that Homer S. Cummings, individually and as Attorney General of the United States; James A. Farley, individually and as Postmaster General of the United States; James M. Landis, Robert E. Healy, George C. Mathews, and James D. Ross, individually and as members of the Securities and Exchange Commission, shall be brought into and made parties to this suit as cross-defendants to the counterclaim and cross-bill of the defendants; and it is

Further ordered that Central Arizona Light and Power Company, Montana Power Gas Company, Indiana & Michigan Electric Company, Spokane Central Heating Company, and Spokane United Railways, be and they are hereby permitted to intervene as additional defendants in this suit, and adopt as their own the pleadings of the defendants herein, with leave to set forth such

224 additional allegations as may be necessary in their bill of intervention, which shall be taken as part of their pleadings; and it is

Further ordered that such additional allegations shall be deemed to have been denied by the plaintiff and the cross-defendants without further pleading on their part.

Dated January 22, 1936.

JULIAN W. MACK,
U. S. C. J.

[Title of Court and cause.]

Stipulation as to Additional Parties

It appearing that the defendants and intervening defendants herein in their answer to the amended and supplemental bill of complaint propose to include in a separate defense a counterclaim and cross-bill, the issues presented by which may require the presence of parties other than those named in the said amended and supplemental bill, to wit, Homer S. Cummings, Attorney General of the United States; James A. Farley, Postmaster General of the United States; James M. Landis; Robert E. Healy; George C. Mathews; and James D. Ross; who are members of, and constitute the, Securities and Exchange Commission (the plaintiff herein):

It is hereby stipulated, without prejudice to the right of the plaintiff or said individuals as defendants to said counterclaim and cross-bill to assert as a defense thereto any matter of law or fact appearing upon the face thereof, or otherwise, except absence of necessary parties defendant to said counterclaim and cross-bill, improper venue, or lack of service of process; that an order may be entered herein bringing in said above-named individuals as cross-defendants to said counterclaim and cross-bill, and that the undersigned, solicitors for the plaintiff, without the service of subpoenas or other process, will appear on behalf of the said above named individual members of the Securities and Exchange Commission and Homer S. Cummings, Attorney General of the United States will appear on his own behalf and on behalf of James A. Farley, Postmaster General of the United States, and will answer said counterclaim and cross-bill on their behalf, and that this stipulation shall
225 constitute such appearances on behalf of all of said cross-defendants. It is agreed that in no event shall any personal judgment, decree, or order for costs be entered against the above named individuals, and defendants expressly waive any right that they may have, or may obtain by virtue of any order or decree subsequently entered herein to tax costs against said individuals.

It is further stipulated that Central Arizona Light and Power Company, Montana Power Gas Company, Indiana & Michigan Electric Company, Spokane Central Heating Company, and Spokane United Railways may be allowed to intervene as additional defendants, and to adopt as their own the pleadings of the defendants herein, and to set forth such additional allegations as may be necessary in their bill of intervention which shall be taken as part of their pleading, and such additional allegations shall be deemed to be denied by the plaintiff and the cross-defendants without further pleadings on their part.

The annexed Order may be entered without notice.
Dated January 21, 1936.

JOHN J. BURNS,
By R. H. J.,
ROBERT H. JACKSON,
Solicitors for Plaintiff,
The Securities and Exchange Commission.
SIMPSON THACHER & BARTLETT,
THOMAS D. THACHER,
JOHN F. MACLANE,
Solicitors for Defendants.
HOMER S. CUMMINGS,
By R. H. J.,
Solicitor for Cross-Defendants Homer S. Cummings, Attorney General of the United States and James A. Farley, Postmaster General of the United States.
JOHN J. BURNS,
By R. H. J.,
ROBERT H. JACKSON,
Solicitors for Cross-Defendants, James M. Landis, Robert E. Healy, George C. Mathews and James D. Ross, members of, and Constituting the, Securities and Exchange Commission.

226 In the District Court of the United States for the Southern District of New York

In Equity. No. E81–378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION AND UNITED GAS CORPORATION, DEFENDANTS; AND POWER SECURITIES CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY; AND EASTON CONSOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS; HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES; JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES; AND JAMES M. LANDIS, ROBERT E.

HEALY, GEORGE C. MATHEWS, AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION, CROSS-DEFENDANTS

Bill of intervention

To the Honorable Judges of the United States District Court for the Southern District of New York:

The bill of intervention of Central Arizona Light and Power Company, Indiana & Michigan Electric Company, Montana Power Gas Company, Spokane Central Heating Company, and Spokane United Railways respectfully shows to this Court and alleges:

1. Central Arizona Light and Power Company is a corporation duly organized and existing under and by virtue of the laws of the State of Arizona and is a resident and citizen of the State of Arizona, with its principal office and corporate domicile in the City of Phoenix in said State.

227

Indiana & Michigan Electric Company is a corporation duly organized and existing under and by virtue of the laws of the State of Indiana and is a resident and citizen of the State of Indiana, with its principal office and corporate domicile in the City of South Bend in said State.

Montana Power Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and is a resident and citizen of the State of New Jersey, with its corporate domicile in the City of Jersey City in said State, but with its principal office and place of business in the City of Butte, in the State of Montana.

Spokane Central Heating Company is a corporation duly organized and existing under and by virtue of the laws of the State of Washington and is a resident and citizen of the State of Washington, with its principal office and corporate domicile in the City of Spokane in said State.

Spokane United Railways is a corporation duly organized and existing under and by virtue of the laws of the State of Washington and is a resident and citizen of the State of Washington, with its principal office and corporate domicile in the City of Spokane in said State.

2. On or about January 22, 1936, an order was duly made and entered by this Court granting leave to Central Arizona Light and Power Company, Indiana & Michigan Electric Company, Montana Power Gas Company, Spokane Central Heating Company, and Spokane United Railways, hereinafter sometimes referred to collectively as the "subsidiary company defendants", to intervene as additional defendants in the above entitled action, to adopt as their own the pleadings of the other defendants, and to file this bill of intervention which is in answer to the Amended and Supplemental Bill of

Complaint of the plaintiff, and by way of counterclaim and cross-bill against the plaintiff and cross-defendants named in the defendants' counterclaim and cross-bill filed herein.

3. Section 2 (a) of the Holding Company Act (hereinafter called the "Act") defines the following, among other, terms: Electric utility company, Gas utility company, Public-utility company, Holding company, Subsidiary company, Holding-company system, Registered holding company, Security and Voting security. When such terms are hereinafter used, they are used in their statutory sense, as thus defined in said Section 2 (a) of said Act. When the term "Answer" is hereinafter used it refers to the answer of the original defendants and the intervening defendants, including the separate defense, counterclaim and cross-bill, filed herein.

228

4. Central Arizona Light and Power Company and Montana Power Gas Company are subsidiary companies of American Power & Light Company. Indiana & Michigan Electric Company is a subsidiary company of American Gas and Electric Company. Spokane Central Heating Company and Spokane United Railways are subsidiary companies of The Washington Water Power Company and thereby of American Power & Light Company. The ownership of the voting stock of the above named subsidiary companies by the above named holding companies is set forth in paragraphs 32 and 36 of, and in paragraph (q) of Exhibit I to, the Answer. By reason of being subsidiary companies of the above holding companies, said subsidiary company defendants are, by definition of Section 2 (a) of the Act, subsidiary companies of Electric Bond and Share Company.

5. None of the subsidiary company defendants is a "Holding company" as defined in Section 2 (a) of the Act.

6. Central Arizona Light and Power Company is an electric utility company and a gas utility company. Indiana & Michigan Electric Company is an electric utility company. Montana Power Gas Company, Spokane Central Heating Company and Spokane United Railways are not public utility companies as defined in said Act.

7. Central Arizona Light and Power Company has for many years conducted and still conducts an electric utility business and a gas utility business solely within the State of Arizona. Said business and the location of the utility assets used in said business are more fully described in paragraph (a) of Exhibit I to the Answer.

8. Indiana & Michigan Electric Company has for many years conducted and still conducts an electric utility business in the States of Indiana and Michigan. The Company owns certain transmission lines which cross the Indiana-Michigan boundary. Substantial

229

amounts of electric energy are transmitted by the Company across such state boundary and are ultimately sold to retail customers of the Company or at wholesale. The Company also has certain transmission lines extending to the Indiana-Ohio boundary which are used for the purpose of exchanging electric energy with, and receiving electric energy from, an associate electric utility company having properties outside the State of Indiana. The business of

said defendant and the location of its utility assets are more fully described in paragraph (c) of Exhibit V of the Answer.

9. Montana Power Gas Company has for many years conducted and still conducts a natural gas business, including an incidental business in by-products, solely within the State of Montana. The Company also purchases substantial amounts of natural gas from sources solely within the State of Montana. The business of said defendant and the location of its properties are more fully described in paragraph (f) of Exhibit I to the Answer.

10. Spokane Central Heating Company has for many years conducted and still conducts a central heating business in a portion of the business district of the city of Spokane in the State of Washington by means of a central steam heating plant and steam pipes and mains. All of the facilities of the Company used in the conduct of its business are located solely within the State of Washington and steam heat is furnished solely to purchasers within said State. Said defendant is referred to in paragraph (q) of Exhibit I to the answer.

11. Spokane United Railways has for many years conducted and still conducts an electric street railway and bus service in the City of Spokane in the State of Washington. All of the facilities of the Company used in the conduct of its business are located solely within the State of Washington and electric street railway service and bus service are rendered solely within the State of Washington. All the electricity used in the operation of the street railway properties is purchased in said State of Washington. Said defendant is referred to in paragraph (q) of Exhibit I to the Answer.

12. Upon the foregoing, each of the subsidiary company defendants alleges that it is a company engaged solely in intrastate business within the state or states in which it operates, subject to the
230 jurisdiction of such state and the regulatory authorities thereof; that it is not engaged in, and its activities do not affect, commerce with foreign nations or among the several states, and that it is not subject to regulation or supervision by the Federal government or any agency or instrumentality thereof, save as any of the operations of the defendant Indiana & Michigan Electric Company, as more fully described in paragraph (c) of Exhibit V to the Answer, may be held to constitute commerce between the states, which said operations are severable and distinct from the operations of said defendant within the States of Indiana and Michigan and constitute a minor and incidental part of said defendant's operations.

13. Defendants Central Arizona Light and Power Company, Indiana & Michigan Electric Company, and Spokane United Railways are subject to the regulations of, and are regulated by, the public service commissions of the states in which they respectively operate, under and in accordance with the terms of the several public utilities acts of said states, to wit, Central Arizona Light and Power Company by the Arizona Corporation Commission, Indiana & Mich-

igan Electric Company by the Indiana Public Service Commission, and the Michigan Public Utilities Commission, and Spokane United Railways by the Washington Department of Public Service. In so far as any of the business of defendant Indiana & Michigan Electric Company may not be fully subject to regulation by the commissions of Indiana and Michigan, and may be subject to any degree of Federal regulation, such business, as hereinbefore alleged, is a minor part of, and severable and distinct from, its intrastate business.

In addition to the general power of regulation of rates and charges for, and conditions of, service and matters incidental thereto, each of the above named commissions has some of the following powers of regulation, among others, over the respective defendants subject to their jurisdiction (the states named after each power being those whose commissions have been specifically given such power): (1) investigation of management (Indiana); (2) inspection of books (Arizona, Indiana, Michigan, Washington); (3) regulation of accounts and statistics (Arizona, Indiana, Michigan, Washington); (4)
regulation of depreciation or retirement account (Arizona,
231 Indiana, Washington); (5) production of books and other
information and filing of reports (Arizona, Indiana, Michigan, Washington); (6) supervision of issuance of securities (Arizona, Indiana, Michigan, Washington); (7) supervision of sale, lease, transfer, mortgage or merger of properties and franchises (Arizona, Indiana); (8) supervision of acquisition of securities or properties of another public utility (Arizona, Indiana, Washington); (9) supervision of payment of dividends (Washington); (10) supervision of budget expenditures (Washington); (11) supervision of contracts with affiliated interests for management, construction, engineering, accounting or similar services (Indiana, Washington).

Defendant Spokane Central Heating Company and defendant Montana Power Gas Company are not now subject to similar regulation by any state agency but are subject generally to the laws of the States of Washington and Montana, respectively.

14. By the provisions of the Act, each of the subsidiary company defendants as a subsidiary company of one or more of the holding company defendants would be and become fully subject to the jurisdiction of the Securities and Exchange Commission, its orders, rules and regulations if this Court should order said holding company defendants to register under Section 5 of said Act. The subsidiary company defendants are advised by counsel and believe that these provisions of the Act as applied to them are wholly unconstitutional, void and of no effect for the reasons stated in the Answer.

15. None of the subsidiary company defendants as a subsidiary company of one or more of the other defendants is entitled to apply for exemption from the provisions of said Act and no such exemption has been granted to them or any of them by order of the Commission. Nor has any of their holding companies been granted exemption except that by Rule 3 A-2 adopted by said Commission, temporary exemption was granted to a class of companies of which

defendant The Washington Water Power Company is one, and by virtue of said rule defendants Spokane Central Heating Company and Spokane United Railways are temporarily exempted from the provisions of the Act as subsidiaries of The Washington Water
232 Power Company. The exemption of defendant The Washington Water Power Company is a temporary exemption existing in the sole discretion of the Commission and defendants Spokane Central Heating Company and Spokane United Railways have no means of knowing whether said exemption will continue after February 2, 1936. Moreover, if this Court should order defendant Electric Bond and Share Company, or defendant American Power & Light Company to register under the Act, the exemption of The Washington Water Power Company, even if continued, would be of no avail to defendants Spokane Central Heating Company and Spokane United Railways since they would be and become fully subject to the jurisdiction of the Commission as subsidiary companies of defendants Electric Bond and Share Company and American Power & Light Company.

16. If the Court should order the defendants which are holding companies of the subsidiary company defendants to register under Section 5 of the Act, each of the subsidiary company defendants would be and become, as hereinabove alleged, fully subject to the jurisdiction of the Securities and Exchange Commission, its orders, rules and regulations. Immediately upon said registration and in consequence thereof, it would be and become unlawful by the terms of the Act for any of the subsidiary company defendants, without the prior approval of the Securities and Exchange Commission, or in contravention of any rule, regulation or order from time to time by it deemed necessary or appropriate, to do any of the things enumerated in the second paragraph of Paragraph 46 of the Answer, except such things as are included within subsection (6) of said paragraph. Each of the subsidiary company defendants would likewise be subject to regulation by the Commission in respect of those matters referred to in the third and fourth paragraphs of Paragraph 46 of the Answer, which are therein stated to be applicable to subsidiary companies of registered holding companies.

If the said defendant holding companies are ordered by this Court to register under Section 5 of the Act, the subsidiary company defendants will likewise be subject to the provisions of Section 26 (b) thereof, set out in Paragraph 43 of the Answer, and that portion of the penalty provision of Section 29, likewise set out in Paragraph 43 of the Answer, which is applicable to subsidiary companies of registered holding companies.

233 17. The subsidiary company defendants adopt, upon information and belief, all the admissions, denials, and allegations contained in the Answer and make said Answer and the allegations of this bill their answer, counterclaim, and cross-bill to plaintiff's Amended and Supplemental Bill of Complaint.

Wherefore the above named subsidiary company defendants pray for the relief requested in the Answer counterclaim and cross-bill of the other defendants herein, to wit: that the Amended and Supplemental Bill of Complaint be dismissed and that said Holding Company Act be declared unconstitutional, null, and void, and that the plaintiff and the cross-defendants be restrained and enjoined from enforcing the same; and further pray that in the event that any other defendant, which is as to these subsidiary company defendants a holding company, be required to register under said Act, the rights, liabilities, and duties of these subsidiary company defendants consequent upon such registration be decreed and determined.

And for such other and further relief as to the Court may seem meet.

SIMPSON THACHER & BARTLETT,
120 Broadway, New York, N. Y.,
Solicitors for Above-named Intervenors and Subsidiary Company Defendants.
THOMAS D. THACHER,
JOHN F. MACLANE,
DOUGLAS A. CALKINS,
Of Counsel.

In Supreme Court of District of Columbia

Answer to motion for inclusion of affidavit and exhibits

Filed February 26, 1936

* * * * * * *

The plaintiff, The North American Company, in response to the motion filed herein and served upon its counsel of record on February 19, 1936, requesting that the affidavit of Homer Cummings sworn to the same day, and the Exhibits annexed thereto, be included in the printed transcript of the record on the special appeal by the plaintiff from the order of this Court entered on January 9,
234 1936, staying the proceedings in the above entitled cause, respectfully says:

1. The plaintiff is advised by its counsel that this Court is without power, at least without the consent of the plaintiff, to incorporate in the record on the plaintiff's aforesaid appeal to the United States Court of Appeals for the District of Columbia, the affidavit of the Attorney General, verified February 19, 1936, or any of the Exhibits referred to in said affidavit, or any part of said affidavit or Exhibits.

2. In addition, and as appears more particularly in paragraphs 4 and 5 hereof the plaintiff denies that certain statements in said affidavit of Homer Cummings are in all respects true.

3. The plaintiff nevertheless is willing, if the same may lawfully be done by the order of this Court and/or by the order of said Court

of Appeals and/or by stipulation of the parties, to have its said appeal heard and determined in said Court of Appeals on a record which shall include said affidavit of the Attorney General and said Exhibits, and that said affidavit and Exhibits may be considered as having been a part of the record on which the order of this Court from which the plaintiff is appealing was made and entered. Provided, however,

(a) That, for the information of the Court of Appeals, there be also incorporated in said record on appeal a copy of the aforesaid motion of the defendants of February 19, 1936, and a copy of this answer thereto, together with a copy of any order of this Court on said motion and of any stipulation between the parties which may be entered into with respect to said motion;

(b) That said affidavit of the Attorney General and said Exhibits be considered as incorporated in said record on appeal only to the extent that said affidavits and Exhibits state facts which are not denied in paragraphs 4 and 5 hereof; and

(c) That Exhibit G annexed to said affidavit of the Attorney General (the amended and supplemental bill of complaint of the Securities and Exchange Commission in the Electric Bond and Share case) be considered on said appeal merely as a bill of complaint, alleging facts which the plaintiffs therein believe to be true and which therefore they would be willing to verify if verification of such bill were necessary.

235 (d) That nothing in this answer contained be taken or construed as an admission by the plaintiff that any of the statements concerning it contained in the quotations from the so-called Splawn Report set forth in paragraph 11 of the said affidavit of the Attorney General were true of the plaintiff at the time when its bill of complaint herein was filed or are now true.

(e) That the defendants consent that there also be incorporated in the record on appeal the following additional facts, hereby alleged by the plaintiff, with respect to the cases referred to in paragraph 9 of the Attorney General's said affidavit—namely, that the bills of complaint in said cases have been or shortly will be dismissed as against the defendants therein who are also defendants in this suit, or that the service of process against said defendants has been or shortly will be quashed; that the remaining defendants in said cases namely, the local district attorneys (and in some cases also the local post masters and other local officials) have defaulted or will default by failing to answer or otherwise move with respect to the bills of complaint therein, with the result that orders in said cases have been or shortly will be entered that said bills of complaint be taken pro confesso as against said local defendants; that therefore none or practically none of said cases will be heard or determined on the merits that the aforesaid dismissals, or (as the case may be) the aforesaid quashing of the service of the process, in said cases as against said defendants in said cases who are also defendants herein

were made on their own motions, on the ground of the improper venue of said suits as against them, or (as the case may be) on the ground that the service of process on said defendants (which in all cases was outside of the district in which the suit was pending) was null and void; and that the aforesaid action of said local defendants in all said cases in suffering said bills of complaint to be taken pro confesso as against them was taken under the advice or instructions of one or more of the defendants herein.

4. With respect to the allegation in said affidavit of Homer Cummings that:

"All of the facts set forth in this affidavit with the exception of Exhibit J described in paragraph 15 were called to the atten-
236 tion of the Court and of opposing counsel in the briefs and oral arguments heretofore submitted on behalf of the defendants in the above entitled causes."

plaintiff denies that said allegation is correct if it is intended to be broad enough to include any one of the following specific allegations of fact:

(a) An allegation that Exhibit B, annexed to said affidavit, purporting to be a true and correct copy of a supplemental bill of complaint in the suit filed by the Securities and Exchange Commission against the Electric Bond & Share Company and certain of its corporate subsidiaries, was called to the attention of the Court and of opposing counsel in the briefs and oral arguments submitted on behalf of the defendants. The only way in which said supplemental bill of complaint was called to the attention of the Court and opposing counsel was by the bare statement of the defendants in their reply brief filed after the argument that the Government "has filed an amended supplemental bill" in that suit.

(b) An allegation that Exhibit H, annexed to said affidavit—purporting to be a schedule setting forth the names of the plaintiffs in each of the forty-nine proceedings alleged to have been pending on December 12, 1935, in the District Court of the United States for thirteen districts seeking an adjudication of the constitutionality of the Public Utility Holding Company Act of 1935, the Court in which each such proceeding is pending, and the date upon which the bill of complaint therein was filed—was called to the attention of the Court and of opposing counsel in the briefs and oral arguments submitted on behalf of the defendants.

5. With respect to the other allegations in said affidavit plaintiff denies that said affidavit is correct in the following particulars:

(a) It is incorrect if it is intended to assert that any of the statements quoted in it on pages 3 and 4 from the so-called Splawn Report contradict or are inconsistent with any of the allegations of the plaintiffs' bill of complaint. In so far as said affidavit is intended to allege that any of said quoted statements are both true and in contradiction of or inconsistent with any of the allegations of said bill of complaint, said affidavit is incorrect.

(b) It is incorrect if the allegations contained in it that "the
237 Electric Bond and Share Company * * * comes in contact with the Act at more points than any other holding company system" is intended as meaning more than that Electric Bond and Share Corporation may be or may have been engaged in some activities not engaged in by the plaintiff, which activities, under the terms of the Act, either are unlawful for a non-registered holding company or would be unlawful for a registered holding company without compliance with the provisions of the Act.

6. Except, therefore, to the extent stated in this answer the plaintiff opposes said motion of the defendants herein for the reasons hereinabove stated.

JOHN C. HIGGINS,
48 Wall Street, New York, N. Y.,
JOHN S. FLANNERY,
Hibbs Building, Washington, D. C.,
Attorneys for Plaintiff.
SULLIVAN & CROMWELL,
48 Wall Street, New York, N. Y.,
Of Counsel.

[*Duly sworn to by Herbert C. Freeman, jurat omitted in printing.*].

238 In Supreme Court of District of Columbia

In Equity. No. 60136

(Title omitted.)

Stipulation re amendment of answer

Filed February 26, 1936

* * * * * * *

It is hereby stipulated and agreed by and between the parties hereto that paragraph 3 (e) and paragraph 4 (a) of Plaintiffs' answers, filed February 26, 1936, to motion of defendants, filed herein February 18, 1936, be amended to read as follows:

3 (e). That the defendants consent that there also be incorporated in the record on appeal the following additional facts, hereby alleged by the plaintiff, with respect to the cases referred to in paragraph 9 of the Attorney General's said affidavit—namely, that the bills of complaint in some of said cases have been dismissed as against the defendants therein who are also defendants in this suit, or that the service of process therein against said defendants has been quashed; that the remaining defendants in some of said cases, namely, the local district attorneys (and in some cases also the local postmasters and other local officials) have defaulted by failing to answer or otherwise move with respect to the bills of complaint therein, with the result that orders in some of said cases have been entered that

said bills of complaint be taken pro confesso as against said local defendants; that in all or virtually all of the remainder of said cases the defendants herein who are also named as defendants in said cases have moved that the bills of complaint be dismissed as against them, or that service of process against them be quashed; that the aforesaid dismissals or motions for dismissals, or (as the case may be) the aforesaid quashing of the service of the pro-
239 cess or motions for quashing of service of the process, in said cases as against said defendants in said cases who are also defendants herein were made on their own motions, on the ground of the improper venue of said suits as against them, or (as the case may be) on the ground that the service of process on said defendants (which in all cases was outside of the district in which the suit was pending) was null and void; and that the aforesaid action of said local defendants in the several cases in which said bills of complaint have been suffered to be taken pro confesso as against them was taken under the advice or instructions of one or more of the defendants herein.

4 (a). An allegation that Exhibit B, annexed to said affidavit, purporting to be a true and correct copy of a supplemental bill of complaint in the suit filed by the Securities and Exchange Commission against the Electric Bond & Share Company and certain of its corporate subsidiaries, was called to the attention of the Court and of opposing counsel in the briefs and oral arguments submitted on behalf of the defendants. However, a copy of said amended and supplemental bill was transmitted to the Court by defendants' counsel under cover of their letter of December 24, 1935, copy of said letter being transmitted at the same time to counsel for plaintiff.

With the foregoing amendments, the parties hereto agree that the defendants' motion, the affidavit of Homer Cummings and exhibits therewith, the plaintiff's answer to said motion and this stipulation and the order of the Court this day entered shall be filed and made a part of the transcript of record to be transmitted to the Court of Appeals, subject to the qualifications contained in plaintiff's said answer, as amended by this stipulation.

JOHN S. FLANNERY.
JOHN C. HIGGINS,
J. C. B.,
Attorneys for Plaintiff.
HOMER S. CUMMINGS,
R. H. J.,
JOHN J. BURNS,
R. H. J.
Attorneys for Defendants.

February 26, 1936.

240 In Supreme Court of District of Columbia

Order as to motion, affidavit, etc.

Filed February 26, 1936

* * * * * * *

This cause came on to be further heard on the 26th day of February 1936, on motion of defendants to perfect the record in this cause by incorporating therein an affidavit of Homer Cummings and appended exhibits, and upon consideration of said motion, the answer of the plaintiff thereto, and the stipulation of the parties, it is this 26th day of February 1936,

Ordered that said motion, affidavit, and exhibits, the answer of the plaintiff thereto and the stipulation of the parties and this order be filed as part of the transcript of record in this cause.

JENNINGS BAILEY,
Justice.

In Supreme Court of District of Columbia

Assignment of errors

Filed February 20, 1936

* * * * * * *

Comes now the plaintiff, The North American Company, by its attorneys, and states that this Court (Bailey, J.) by order entered January 9, 1936, erred as follows:

1. In granting the motion of the defendants to stay the proceedings herein.

2. In entering the order of January 9, 1936, staying the proceedings in this cause to await the outcome of another proceeding in the courts of a foreign jurisdiction, between other parties and involving different issues, which this Court has no power to control.

3. Because said order is in effect an injunction against the assertion of plaintiff's rights during the period specified and denies to plaintiff its statutory and constitutional right to have the questions of fact and law raised in its bill of complaint speedily determined and conclusively adjudicated by the Courts of this jurisdiction.

4. Because said order will cause plaintiff irreparable injury,
241 impair its freedom of contract and deprive it of the right to the enjoyment and use of its property, without any pecuniary redress.

5. Because the Court had no power or jurisdiction to enter said order.

6. Because said order constitutes an abuse of any discretion which the Court may have had in the premises and is arbitrary and capricious.

7. Because said order is not supported by any facts properly before the Court.

8. Because the Court made no findings of fact and separate conclusions of law as required by equity rule No. 70½ of the Supreme Court of the United States promulgated November 25, 1935.

JOHN C. HIGGINS,
JOHN S. FLANNERY,
Attorneys for Plaintiff,
The North American Company.

Service of a copy of the foregoing assignment of errors is acknowledged this 20th day of February 1936.

HOMER CUMMINGS,
Atty. Gen.
By UGO CARUSI,
Executive Asst.
JOHN J. BURNS,
Attorneys for Defendants.

In Supreme Court of District of Columbia

Designation of record

Filed February 20, 1936

* * * * * * *

Now comes The North American Company, the plaintiff in the above entitled cause, by its attorneys of record, and designates the following for inclusion in the transcript of record on appeal in the above entitled cause:

1. Bill of Complaint.
2. Motion of Defendants to Stay Proceedings.
3. Answer of Plaintiff to Defendants' Motion for a Stay and Exhibit.
4. Memorandum of Bailey, J., filed January 6th, 1936, sustaining motion to Stay.
5. Order of Bailey, J., entered January 9th, 1936, staying further proceedings.

242 6. Order of the United States Court of Appeals for the District of Columbia, dated February 17th, 1936, granting Petition for Allowance of a Special Appeal.

7. Plaintiff's Assignment of Errors.
8. This Designation of Record.

JOHN C. HIGGINS,
JOHN S. FLANNERY,
Attorneys for Plaintiff, Appellant.

Service of a copy of the foregoing Designation of Record is acknowledged this 20th day of February 1936.

HOMER CUMMINGS,
Atty. Gen.

By UGO CARUSI,
Executive Asst.

JOHN J. BURNS,
Attorneys for Defendants.

[Clerk's certificate to foregoing transcript omitted in printing.]

243 In United States Court of Appeals for District of Columbia

January term, 1936

No. 6654

THE NORTH AMERICAN COMPANY, APPELLANT,

v.

JAMES M. LANDIS ET AL., APPELLEES

Stipulation as to transcript of record filed March 2, 1936

It is stipulated by counsel for the respective parties in the above entitled cause that in printing the record, the Clerk shall omit therefrom Exhibit A, pages 36 to 55, inclusive, of the typewritten record, said exhibit being a copy of the original bill of complaint in the case of Securities and Exchange Commission v. Electric Bond and Share et al., as said original bill of complaint is superseded by the amended and supplemental bill of complaint in said latter case which is included in the typewritten record at pages 80 to 114¾.

JOHN S. FLANNERY,
L.,
JOHN E. LARSON,
Attorneys for Appellant.
HOMER S. CUMMINGS,
B. V. C.,
JOHN J. BURNS,
B. V. C.,
Attorneys for Appellees.

[File endorsements omitted.]

245 United States Court of Appeals for the District of Columbia

Original No.

THE NORTH AMERICAN COMPANY, PETITIONER *vs.* JAMES M. LANDIS, GEORGE C. MATHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION OF THE UNITED STATES, HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES, AND JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, RESPONDENTS

Petition for allowance of special appeal

To the Honorable Chief Justice and the Associate Justices of the United States Court of Appeals for the District of Columbia:

Comes now your petitioner and prays for the allowance of a special appeal from an order of the Supreme Court of the Dis-
246 trict of Columbia entered therein on the ninth day of January 1936 by Mr. Justice Bailey in the case of The North American Company, Plaintiff *v.* James M. Landis, et al., Defendants, Equity No. 60136, and for reasons in support thereof, respectfully shows unto this Court:

I

Said order is an order staying all proceedings in petitioner's said suit "until the validity of" the Public Utility Holding Company Act of 1935 "has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission *v.* Electric Bond and Share Company, et al., now pending in the District Court of the United States for the Southern District of New York, or until that case is otherwise terminated."

II

Because of the facts hereinafter alleged, said stay of petitioner's said suit in the court below is now causing petitioner irreparable damages, which damages will continue to increase unless and until said stay is vacated. Said stay is a grave abuse of any power of discretion which the court below may have had in the premises. It operates practically as an injunction against the assertion of petitioner's rights during the period specified, and denies to
247 petitioner its constitutional right to a reasonably prompt trial of the issues involved in its said suit, impairs its freedom of

contract and deprives it of the right to the enjoyment and use of its property. Petitioner therefore alleges that the granting of the appeal for which it petitions is necessary in the interest of justice.

III

The facts with respect to petitioner's said suit and said suit in favor of which petitioner's suit is stayed, and with respect to said stay are as follows:

1. Petitioner is a New Jersey corporation.

2. It is a "holding company" within the definition of that term contained in Title I of the Act of Congress, approved August 26, 1935, entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes" (Pub. No. 333, 74th Cong. 1st Sess.) (hereinafter called "the Act").

3. Under the provisions of Section 4 (b) of the Act, petitioner is required on or before December 1, 1935, to register with the Securities and Exchange Commission (hereinafter called "the Commission"), created by an Act of Congress, approved June 6, 1934, known as "the Securities Exchange Act of 1934" (48 Stat. 881).

248 4. Petitioner has not registered under the Act and does not intend to do so, having been advised by counsel that the Act, as to petitioner, is unconstitutional in its entirety. It has alleged in its bill of complaint in the court below, and hereby realleges, that the inevitable and irreparable damages which it will suffer from registering will be at least as great as those which it will suffer from not registering, and it is advised by counsel (as is also alleged in said bill) that its right to challenge the constitutionality of the Act may be prejudiced by registering under it.

5. On November 26, 1935, it filed its bill in equity in the court below, naming as defendants the respondents herein (hereinafter called the "defendants"; namely, the four members of the Commission, the Attorney General, and the Postmaster General of the United States.

6. The defendants were served with process on the same day, and thereafter appeared in the court below and moved for the stay, as is hereinafter in paragraph 17 alleged.

7. The Commission is specifically charged by the Act with the enforcement and administration of its provisions. The Attorney General is specifically empowered by Section 18 of the Act to enforce its criminal provisions. Many of the provisions of the Act

249 prohibit the use of the mails for certain specified purposes by both unregistered and registered holding companies. It is the duty of the Postmaster General, as prescribed by law, to enforce said last named provisions of the Act.

8. Petitioner's bill alleges the unconstitutionality of the Act as a whole as against petitioner and seeks a permanent decree restraining the defendants from seeking to enforce its provisions against petitioner. Petitioner's bill also seeks a declaration of the unconsti-

tutionality of the Act as a whole as against petitioner, under Section 274 (d) of the Judicial Code, as amended by the Act of June 14, 1934 (Chapter 512, 48 Stats. 955, Title 28 U. S. C. A. § 400) (hereinafter called "the Declaratory Judgment Act").

9. Petitioner's bill invokes the equitable jurisdiction of the court to enjoin the enforcement of the Act as unconstitutional, under principles established in the leading cases of Ex Parte Young, 209 U. S. 123; Pierce v. Society of Sisters, 268 U. S. 510; Euclid v. Ambler Realty Co., 272 U. S. 365; and Terrace v. Thompson, 263 U. S. 197.

10. The bill alleges both (a) threats to enforce the Act against petitioner (Article XIII (a) and (b)),[1] and (b) with great
250 circumstantiality (Articles VII, VIII, IX, XII, and XIV) exactly how the provisions of the Act (which are alleged with the same circumstantiality) are now causing petitioner irreparable damages, and why these damages will continue to increase until petitioner obtains a final decree granting the prayers of the bill. The bill shows that these damages result from the practically complete paralysis of petitioner's normal and necessary business activities caused by the cloud which the provisions of the Act and the activities of the defendants thereunder cast on the validity of all of petitioner's business and transactions, including its contracts and the continued holding and voting of the stock of its subsidiary corporations.

11. On the same day that petitioner's bill was filed in the court below (November 26, 1935, the Commission filed its bill in equity in the United States District Court for the Southern District of New York against Electric Bond and Share Company (hereinafter called "Electric Bond") and five of its corporate subsidiaries.

12. The defendants in said Electric Bond suit are alleged to be holding companies within the definition of the Act and to be required to register with the Commission on or before December 1, 1935, as aforesaid.

251 13. The bill in said suit asks only that the defendants be required by mandamus to register under Section 4 (b) of the Act and that they be enjoined from violating the provisions of Section 4 (a) thereof.

14. Within approximately four days after the commencement of the two aforesaid suits, six other corporations, which are also holding companies within the definition of the Act, filed their bills in equity in the court below against the defendants.

15. These bills seek, on substantially the same grounds, the same relief sought by petitioner in its bill, except that some of them do not seek relief under the Declaratory Judgment Act.

16. The same or similar relief has been sought in different United States District Courts by a large number of other corporations which are also holding companies within the definition of the Act.

---

[1] Petitioner will submit a copy of the bill to the court should it care to examine the same in connection with this petition.

On information and belief, these bills name as parties defendant the United States District Attorneys in the respective districts and the local Postmasters, and some of them name other defendants, including the defendants named in petitioner's bill.

17. On December 7, 1935, the defendants made their aforesaid motion for a stay of all further proceedings in petitioner's
252 suit and also in the other above mentioned suits in the court below, until the final determination, by decision of the Supreme Court of the United States, or otherwise, of the aforesaid suit of the Commission against Electric Bond in New York.

18. The motion was signed by the Attorney General of the United States and by the general counsel for the Commission, without supporting affidavits.

19. The motion did not allege, and there has been no later attempt by the defendants to show:

(a) How soon the Electric Bond case would probably be at issue on bill and answer or otherwise. (In this connection petitioner also alleges that since said motion was made and on or about December 21, 1935, an amended bill has been filed in said case, and that as yet none of the defendants have answered it.); or

(b) How soon the Electric Bond case would probably be reached for hearings on bill and answer or otherwise; or

(c) That the Electric Bond case would probably be reached for hearing before petitioner's case or before any of the other cases in the court below; or

(d) How soon a final determination of the Electric Bond case may reasonably be expected.

20. In their briefs and arguments on this motion the defendants asserted that the taking of testimony in the Electric Bond
253 case on the hearings on the bill and answer would require at least six months.

21. The only reasons for the stay alleged in said motion were

(a) The pendency of the suits hereinabove mentioned in the court below and in other courts to enjoin the enforcement of the Act;

(b) That the Government "is anxious to secure an early determination of" the constitutionality of the Act; that to that end the Commission has instituted the above mentioned suit against Electric Bond; that this suit "will be prosecuted with all due diligence to secure from the Supreme Court" a decision as to "the validity of the essential features of the Act"; and

(c) A statement that "no public interest will be served by pressing for a decision of this issue in a multitude of suits", but that this "will tend to clog the courts, overtax the facilities of the Government and make against that orderly and economical disposition of the controversy which is the Government's aim."

22. At no stage of the proceedings on the motion have the defendants attempted to show that the issues in the Electric Bond case are identical with the issues in petitioner's suit, or with the issues in

any of the other suits attempted to be stayed. The most that the defendants have asserted in this connection is that the decision
254 in the Electric Bond case would "simplify the issues" and furnish a "valuable precedent" in the suits to be stayed.

23. On the contrary, petitioner has shown that the allegations of the Commission's own bill in the Electric Bond case show that that company differs essentially from petitioner, and in particular that the bill in that case relies specifically, in support of the constitutionality of the Act as against Electric Bond, on alleged activities of that company which petitioner's bill expressly denies this petitioner engages in. If, as the allegations in the bill against Electric Bond seem to indicate, proof that Electric Bond is engaged in such activities is essential to establish the constitutionality of the Act as against Electric Bond, the Act is presumably unconstitutional as against petitioner.

24. Petitioner has also shown, and the defendants do not deny, that it is possible that the Electric Bond case will be held to involve only the question of the constitutionality of Section 4 of the Act, requiring certain holding companies to register and making illegal certain specified acts by unregistered holding companies.

25. The defendants have not attempted to deny that the question of the constitutionality of the Act may well be held to be in-
255 volved in a much broader and more comprehensive way under the issues presented by petitioner's bill than under those presented by the bill in the Electric Bond case.

26. On the argument of the motion counsel for petitioner, speaking on behalf of petitioner and of all the other complainants in the court below, made to the defendants the following proposal:

"If counsel for the Government really want in these cases to avoid a multiplicity of trials and suits and proceedings and if they will meet any of our overtures half way, I undertake to say that it will not be difficult for us to agree upon a group of three or four cases which will present every question that is involved in this multitude of suits, so that every one of these companies may be satisfied that its rights will be promptly determined—consolidate them all in one case, in one court, and try them out—so that the Government need not multiply its staff and need not exhaust its budget; and if it can go ahead, if it wants to go ahead, to a fair determination of those issues in one case, in one court, we will know then, in a year's time, perhaps, just what the fate of all these companies is to be."

The Attorney General in open court declined unconditionally even to consider this offer.

27. In their briefs on the motion and in their oral argument the defendants offered to consent to a temporary injunction against
256 them in the suits sought to be stayed, said injunctions to remain in effect pending the final decision in the Electric Bond case. The allegations of paragraph 10 of this petition show why such a temporary injunction would not prevent the damages which

petitioner is suffering and will continue to suffer until the Act is declared unconstitutional as to it, and until the defendants are permanently restrained from enforcing the Act against it, and why therefore petitioner could not accept said offer and has not prayed for a temporary injunction in its bill.

28. In their briefs on the motion the defendants have urged, as additional reasons for the requested stay against petitioner.

(a) That petitioner's bill does not state a cause of action entitling it to equitable relief; and

(b) That it does not show any ground for relief under the Declaratory Judgment Act.

But the defendants have made no motion to dismiss on these or any other grounds.

29. In their oral arguments and briefs on the motion the defendants threatened that if the requested stays were not granted they might not defend petitioner's suit or the other suits in the court below, but might suffer decrees to be taken against them, and
257 that in such event they might not appeal from such decrees; and they further asserted or intimated that, if this were done and if subsequently the Act should be held constitutional in the Electric Bond case, such a decision would make it impossible thereafter to enforce the decrees against them in petitioner's suit and the other suits in the court below.

30. In their briefs and arguments on the motion the defendants referred to

(a) Announcements made by the Commission to the effect that holding companies which registered under the Act might do so without prejudice to their rights thereafter in any way to challenge its constitutionality. (For the reasons hereinabove in paragraph 4 stated, petitioner has refused to register under the Act, despite the aforesaid announcement of the Commission); and

(b) An announcement by the Attorney General that he does not at present intend to prosecute non-registering holding companies for penalties imposed on such companies by Section 29 of the Act until after a final judicial adjudication with respect to the validity of the Act, and to his "suggestion" to the same effect in a circular letter to the Federal District Attorneys; and

(c) Instructions issued by the Postmaster General to postmasters not for the present to refuse the use of the mails to non-registering holding companies.

258 31. On the facts hereinabove in paragraphs 1 to 30, inclusive, alleged, the court below granted the stay requested by the defendants.

32. With respect to the suits, hereinabove in paragraph 16 referred to, commenced in various of the District Courts of the United States, the opinion of the court below in granting the requested stay states: "Counsel seem to agree that these latter cases are defective for want

of jurisdiction, and that it is likely that if dismissed in the Courts where they are now pending, they will be filed in this Court."

33. Petitioner is advised by its counsel and therefore alleges that counsel for this petitioner has never conceded and does not believe that said cases in other Federal courts are defective or will probably be dismissed for want of jurisdiction. The claim of jurisdictional defects in said cases is solely that of counsel for the defendants, and the learned court was therefore mistaken in said statement quoted in paragraph 32 above.

IV

Petitioner respectfully submits the following reasons for asking this Court to grant its petition for said special appeal and for holding that the stay of proceedings granted by the court be-
259 low constitutes a gross abuse of any discretion which it may have had in the premises.

1. Even a mere stay of legal proceedings already commenced may constitute an unlawful infringement of constitutional rights. Sliosberg v. New York Life Insurance Co., 244 N. Y. 482.

2. A stay granted to A in an action or suit against him by B until the final decision of a proceeding brought by the applicant, A, against another party in another jurisdiction is a remedy of an extraordinary nature, which should be granted, if at all, only in the most unusual and compelling cidcumstances, even when the issues in the two proceedings are identical. Such a stay enables a party to a controversy between himself and different separate parties, involving the same question or issue, to select not only the adversary party with whom such issue is first to be tried to final judgment, but also the court in which it is to be tried, and possibly also the judge who will try it, and no court should confer such a favor on any litigant. In a matter of this sort, the discretion of a court of equity can be no wider than that of a court of law.

3. Where, as in the case at bar, the issues are not identical, to grant a blanket in-limine stay is a flagrant abuse of any discretion which a court may have in such matters, and a violation of constitu-
260 tional rights, where, as also in the case at bar, there are present the following additional facts:

(a) The applicant for the stay has made no attempt to show that the proceeding which he seeks to prefer, will, in the usual and probable course of events, be promptly tried and tried before the proceedings which he asks to have stayed;

(b) The stayed suits are a number of substantially identical suits against the applicant for the stay in the court of his own domicile;

(c) The preferred suit is a single suit in another jurisdiction, which the court that grants the stay cannot control;

(d) The issues in the suits to be stayed will probably be broader and more comprehensive than those in the preferred suit;

(e) The parties stayed will suffer irreparable injury during the stay and because of the stay, against which injury there is no indemnity by bond, or otherwise; and

(f) The applicant for the stay has refused even to consider an offer made by the parties stayed to stipulate with him that only a few of the entire number of suits, to be selected by agreement between the adversary parties, shall be tried (and, if the applicant wishes, tried together in one consolidated case), as test suits of the issues involved in them.

4. None of the following additional facts, relied upon by the defendants, justifies the stay which has been granted here:

261 (a) The fact that other similar suits are pending in other jurisdictions, which suits may later be dismissed or withdrawn, and might thereafter be recommenced in the court below. That bridge should not be crossed until it is reached.

(b) The defendants' contention that the pending bills in the court below, or any of them, are insufficient in law—either because the bills show no ground for equitable relief against the enforcement of the Act or because they do not state a cause of action under the Declaratory Judgment Act. If either of these contentions is sound, the defendants have their remedy by motions to dismiss.

(c) The statements of the defendants that, if the requested stay is not granted, they may suffer decrees to be taken against them in these suits and not appeal such decrees, and that, if they do this, and if the Act is thereafter held to be constitutional in the Electric Bond case under a decision which would also be applicable to the plaintiffs in these suits, the decrees against the defendants in these suits could not thereafter be enforced against them. If this latter contention is sound, the defendants obviously need no stay in these actions. If it is not sound, the defendants are in the remarkable position of supporting a request to stay a suit rightfully commenced against them by a threat not to defend it if the stay is not granted.

5. Any relief that the defendants may hereafter be able to show themselves entitled to by way of reasonable extension of their

262 time to answer, or by way of any ordinary postponement of hearings on the bills and answers, or consolidation of causes presenting the same issues, may be granted them when the actual necessity therefor arises.

6. But no litigant is entitled to a stay order which permits him, as one party in a series of lawsuits with many other litigants, to select the adversary, the issues, the state of facts, and the court which he prefers for the litigation, in order that he may, as defendants argued in the lower court, prosecute that one case through the trial and appellate courts to a final decision which will serve as a "valuable precedent" on some of the issues which will ultimately have to be tried in the cases that are stayed. And that is especially true where, as here, the plaintiffs in the cases that are stayed are daily

suffering great and irreparable and increasing damages which will continue all through the long period of the stay, and through the additional long period that must subsequently elapse before their own cases can be tried and finally decided on appeal.

7. In these circumstances we respectfully submit that the issuance of the stay order in this case constitutes a grave abuse of discretion. No precedent justifying such an extraordinary proceeding was presented to the court below, and counsel for petitioner are prepared to show to this Honorable Court, upon the hearing of an appeal where the authorities may properly be cited and reviewed, that no precedent for such a stay exists.

263 Wherefore, the premises considered, petitioner prays for an allowance of a special appeal from the order of Mr. Justice Bailey entered herein on the ninth day of January 1936 and for such other and further relief as to this Honorable Court may seem proper and just.

THE NORTH AMERICAN COMPANY,
By JAMES F. FOGARTY, *Its President*,
Petitioner.

JOHN C. HIGGINS,
48 Wall Street, New York, N. Y.
JOHN S. FLANNERY,
Hibbs Building, Washington, D. C.,
Attorneys for Petitioner.

SULLIVAN & CROMWELL,
48 Wall Street, New York, N. Y.,
McKENNEY, FLANNERY & CRAIGHILL,
Hibbs Building, Washington, D. C.,
Of Counsel.

264 UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, County of New York, ss:

JAMES F. FOGARTY, being first duly sworn, says: That he is the President of The North American Company, the petitioner in the foregoing petition; that he is duly authorized to make oath to the same; that he has read the foregoing petition and knows the contents thereof and that he verily believes the facts stated therein to be true.

JAMES F. FOGARTY.

Sworn to before me this 15th day of January 1936.

Arthur Mayer,
[NOTARIAL SEAL] ARTHUR MAYER,
Notary Public, Nassau Co., No. 2129.

New York Co. Clerk's No. 1193.
New York Co. Register's No. 7-M-728.
Term Expires March 30, 1937.

265 United States Court of Appeals for the District of Columbia

Original No. 2559

THE NORTH AMERICAN COMPANY, PETITIONER

vs.

JAMES M. LANDIS ET AL., RESPONDENTS

Objections to allowance of special appeal

To the Honorable Chief Justice and the Associate Justices of the United States Court of Appeals for the District of Columbia:

Now come the Respondents and pray that the Petition for allowance of a special appeal from an order of the Supreme Court of the District of Columbia entered therein on the ninth day of January 1936, by Mr. Justice Bailey in the case of The North American Company, Plaintiff, v. James M. Landis et al., Defendants, Equity No. 60136, be dismissed.

Answer to allegations of petition

(The numbering of Articles, paragraphs and subparagraphs corresponds with the numbering in the Petition.)

I

Said Order is not, as in effect alleged, an unqualified "order staying all proceedings in Petitioner's suit 'until the validity of' the Public Utility Holding Company Act of 1935 'has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission v. Electric Bond and Share Company, *et al.*, now pending in the District Court of the United States
266 for the Southern District of New York, or until that case is otherwise terminated.'" The proceedings were stayed only upon the terms and conditions set forth in the appended opinion of the Supreme Court of the District of Columbia in this cause filed on the sixth day of January 1936. The stay is, by the opinion, expressly "conditioned upon a diligent and active prosecution of the Electric Bond and Share case." Under the terms of the stay and during the period covered thereby, as the opinion clearly states, the Petitioner has a right to an injunction against the Respondents if and whenever Petitioner deems it necessary to avail itself of that right. The trial court found that such interlocutory relief would give the Petitioner "all the protection needed pending a decision by the Supreme Court" in the Bond and Share case "and save great amount of labor, time and expense." The stay granted is interlocutory and remains completely within the control of the trial court to revise or vacate in the event of any possible unanticipated hardship or for any other good cause shown.

II

The Respondents deny that the stay of Petitioner's suit in the court below is now causing Petitioner irreparable damages or that such alleged damages will continue to increase unless and until said stay is vacated. To the contrary, the stay was sought and granted not because of any statutory or technical rule binding upon the court but as a matter of discretion to maintain the orderly course of justice—grounds requiring the court to be satisfied that the stay did not prejudice any legitimate interest of the petitioner. And the court expressly found: "The plaintiffs seek an early decision by the Supreme Court but they could not appeal from a decree of this Court in their favor, and as said before, I cannot see how their real interests will not be protected by the temporary injunction to which the defendants offer to submit."

The Respondents deny that the stay was a grave abuse of discretion which the court below undoubtedly had in the premises. To the contrary, the Respondents assert that the stay was necessary to maintain the orderly course of justice and prevent a grave abuse by the Petitioner of the judicial process of the court below.

267 The Respondents deny that the stay operates practically as an injunction against the assertion of Petitioner's rights during the period specified or that the stay denies to the Petitioner any constitutional, legal, or other right of which a court of equity may properly take cognizance, or that the granting of the appeal is necessary or even compatible with the interest of justice. The stay in no sense operates as an injunction against the Petitioner; it controls only the progress of this particular cause so as to maintain the orderly course of justice. The Petitioner, by electing to bring this Petition for the allowance of a special appeal, has recognized that the order of stay is not in the nature of an injunction from which an ordinary appeal may be taken. If, as counsel for the Petitioner allege in paragraph 33 of Article III of its Petition, the cases in other districts brought by subsidiary holding companies of the Petitioner, and numerous other holding companies are not jurisdictionally defective, then the Petitioner itself is free to assert any and all its rights in other districts, including its domiciliary district. The Petitioner, as distinguished from some of its subsidary companies, is neither resident nor doing business in the District of Columbia.

III

The Respondents deny that all of the facts relating to the granting of the stay by the court below are fully and accurately set forth in Article III of the Petitioner's Petition. For purposes of this Answer, the Respondents do not deny the allegations of paragraphs 1, 2, 3, 5, 6, 8, 11, 12, 13, 14, 15, 16, and 17 of Article III; but they do deny certain of the allegations of the remaining paragraphs as will hereinafter more particularly appear.

4. Respondents admit that the Petitioner alleges the unconstitutionality of the Act as an excuse for its failure to register. Respondents deny that Petitioner will suffer any inevitable and irreparable damage from registering or not registering under the Act. The inconvenient position of a non-registered company has been deliberately chosen by the Petitioner as an alternative to filing a simple notification of registration—all that is presently required of registered companies. Respondents deny that Petitioner's right later to challenge the constitutionality of the Act could possibly be prejudiced by presently filing such notification. Respondents assert that such a contention is frivolous and without color or merit;

268 all four judges who have considered the contention that registration waives or impairs any constitutional right, have rejected it: Judge Way, in Public Utility Investing Corporation v. Utilities Power & Light Corporation, U. S. District Court, E. D. Va., December 17, 1935; Judge Holly in Matter of Public Utilities Securities Corporation, U. S. District Court, N. D. Ill., November 27, 1935; Judge Coleman, in Matter of American States Public Service Company, U. S. District Court, D. Md., November 7, 1935; and Mr. Justice Bailey in the opinion filed January 6, 1935, in the proceedings below.

7. The Respondents deny that the Attorney General is specifically empowered by Section 18 of the Act to enforce its criminal provisions before evidence of violation is transmitted to him by the Securities and Exchange Commission. The Respondents further deny that it is the duty of the Postmaster General, as prescribed by law, to enforce the provisions of the Holding Company Act.

9. The Respondents admit Petitioner's bill invokes the equitable jurisdiction of the court to enjoin the enforcement of the Act as unconstitutional. But the Respondents deny that the bill is sustainable under the principles established by Ex Parte Young, 209 U. S. 123; Pierce v. Society of Sisters, 268 U. S. 510; Euclid v. Ambler Realty Co., 272 U. S. 365; and Terrace v. Thompson, 263 U. S. 197, in each of which specific threats of enforcement were alleged and admitted. Where there are no specific threats, a court of equity has no jurisdiction to give an injunction, Ex Parte La Prade, 289 U. S. 444; Spielman Motor Co. v. Dodge, 295 U. S. 89; and, as the trial court pointed out, under such circumstances, there is no case or controversy against any defendant which warrants the giving of a declaratory judgment. Liberty Warehouse Co. v. Grannis, 273 U. S. 70.

The Respondents aver that whether the Petitioner's bill is ultimately determined to be with or without equity is irrelevant to the granting or denying of the stay. The Respondents did not move to dismiss Petitioner's bill. As the Attorney General stated below (Reply Brief In Support of Motion to Stay Proceedings, 29–30):

"The Government does not feel that for the purposes of this proceeding it must demonstrate beyond doubt that this Court is with-

out equitable jurisdiction to try the plaintiff's bills. The Government has already brought a test suit without jurisdictional difficulties as a vehicle to take the question of the constitutionality of the Act to the Supreme Court—the only purpose for which the plaintiffs want a final decision of this Court. The Government feels, therefore, that it needs only to indicate to this Court that there is
269 sufficient doubt about the Court's equity jurisdiction so that its questionable character can be settled finally only by the United States Supreme Court, and that there is a real possibility that if the Court proceeded to a long and expensive trial on any of these bills the case might ultimately be dismissed by the United States Supreme Court upon jurisdictional ground without any adjudication upon the substantive issues of constitutionality."

10. The Respondents deny each and every allegation of Paragraph 10 of the Petition. To the contrary, the Respondents aver that the Petitioner stands in no danger from any threatened action of any Respondent. The trial court's opinion refers to public disclaimers by the Commission, the Attorney General, and the Postmaster General, disclaiming any intention of prosecuting for any violation of the Act before a decision of the Supreme Court sustaining its constitutionality or thereafter seeking penalties for prior offenses. The Petitioner does not contradict or challenge such disclaimers.

Petitioner's bill does not specifically and concretely allege any threat by the Respondents other than that which springs from the mere existence of provisions of the Act conferring authority upon the Commission and the Attorney General to enforce the Act upon the fulfillment of certain conditions. At the hearing Petitioner relied chiefly upon the threat of eventual dismemberment created by the existence of Section 11 (b) and its concern about the invalidation of contracts made in violation of the Act because of the existence of Section 26 (b). By the terms of the Act Section 11 (b) applies only to a registered holding company (which the Petitioner has chosen not to become), and gives the Commission no power to issue orders thereunder prior to January 1, 1938. Nor can a violation of any order under Section 11 (b) be the basis of any criminal prosecution (see Sec. 29). Section 26 (b) merely declares the common law rule of illegality which no Respondent has any color of authority, or has threatened, to enforce.

The temporary injunction offered with the stay protects the Petitioner as fully as the power of the court below can protect the Petitioner from any act or authority to act of any of the Respondents.

18. Respondents admit that the motion for a stay was signed by the Attorney General and by the General Counsel for the Commission without supporting affidavits. The Petitioner raised no objection in the court below to the presentation of the pertinent facts by the Attorney General without the submission of sworn affida-
270 vits. Counsel for Petitioner in paragraph 26 calls attention to

his own unsworn statements in the court below. Respondents aver that the printed documents appended hereto entitled Argument in Support of Motion to Stay Proceedings, Reply Brief in Support of Motion to Stay Proceedings, and Appendix to Reply Brief in Support of Motion to Stay Proceedings, were submitted to the court below over the signature of the Attorney General and include the statements of facts made to the court below by the Attorney General. These documents are appended together with an affidavit of the Attorney General attesting the truth of the statements of facts therein.

19. The Petitioner unfairly and inaccurately states the facts as to the proposed trial and determination of the Electric Bond and Share suits. The Respondents themselves suggested that the trial court reserve full right to withdraw the stay if the Government does not prosecute the Bond and Share suits vigorously and promptly. The Respondents represented to the court below that the Government had already done extensive work on the Bond and Share suits, that the answer of the defendants in such suits was at that time expected within a few weeks, that the Government was cooperating with counsel for such defendants to stipulate a large portion of the facts for the trial. The Attorney General expressly stated to the court below:

"If the Government is not hampered by a number of other actions, the Electric Bond & Share case will come to the Supreme Court for a decision on the substantive merits before any suit involving jurisdictional questions can reach that Court. The stay requested will, therefore, make relatively simple the task of all concerned—this Court, the holding companies, and the Government—and the saving not only to the taxpayers of the country but to the stockholders of the plaintiff holding companies should be really substantial." (Argument On Motion to Stay Proceedings, 24.)

The Petitioner made no effort to, and could not, show that a trial of its suit would be more expeditious than that of the Bond and Share suits.

20. The Petitioner in paragraph 20 of its petition does not fairly represent the position of the Government as to the time required to try the Bond and Share suits. The Attorney General did state that the Bond and Share trial might take several months. But he also indicated that the preparation for trial of any suit with any major holding company would take months and that the trial itself would require several additional months. By the time of the proceeding in the trial court the Government was already well into the preparation of the Bond and Share suits. The Government had been
271 unable to make preparation to meet the Petitioner's suit.

21. Paragraph 21 of the Petitioner's Petition states only the bare reasons for the stay urged in the Government's motion; it does not give a fair impression of the careful and thorough explanation of the reasons for the stay given in person and in his briefs by the Attorney General.

22. The Respondents deny each and every allegation of paragraph 22 of the Petitioner's Petition. The Government undertook to demonstrate to the trial court that if, as the Petitioner had alleged in its bill, the provisions of the Act was inseparable, the decision in the Bond and Share suits would necessarily dispose of the issues raised in the Petitioner's bill. But the Respondents went further. As the Attorney General in his Reply Brief stated (13–15):

"On the theory of the plaintiff's own pleadings, therefore, the Bond & Share cases will raise and settle all the fundamental constitutional questions which can be raised and settled in the suits now before this Court. On this point, as on many other points in this proceeding, the plaintiffs have tried to blow both hot and cold. For the purpose of offering an excuse to this Court of equity for bringing suit before complying with simple registration provisions, they have pleaded that the registration provisions are not separable from other provisions of the Act. For the purpose of trying to show a substantial difference between the scope of the issues which can be raised in their cases and the Bond & Share suits, they have argued that the provisions of the Act are separable, that the Act may be constitutional as applied to the Bond & Share companies and unconstitutional as applied to the plaintiffs, and that the Bond & Share suits will not put in issue section 11 and the other sections of which they complain. Whether the Bond & Share suits ultimately are decided in favor of or against the Government, there can be no question that they will decide whether the registration provisions are valid, whether or not separable from the other provisions of the Act, and to what extent the validity or invalidity of any other provisions of the Act may operate as a valid defense for failure to register. Such a decision alone will be enormously helpful in clarifying and defining the proper issues in suits before this Court. Such a decision alone would justify this stay as promoting the orderly processes of the court. The inconsistent positions of counsel in this very case illustrate the fundamental confusion that only such a decision can resolve.

"If, therefore, the court in the Bond & Share suits decides that the provisions of the Act are inseparable, every possible issue of constitutionality under the Act can, and undoubtedly will, be raised. If, on the other hand, the court in the Bond & Share cases decides that the provisions of the Act are separable, such a decision will enormously reduce the issues of law and precisely define the facts relevant to those issues in the cases before this Court, as well as settle issues specifically relevant to such cases as described in the next point in this brief."

272 23. The Respondents deny that the Petitioner has shown that the allegations of the Commission's bill in the Bond and Share companies differ essentially from the Petitioner.

There is appended hereto a copy of the Commission's bill against the Bond and Share Company and twenty-one subsidiary holding companies, and a copy of a proposed answer of the Bond and Share

Companies which has been handed to the Government to facilitate and expedite preparation for trial. Such Answer includes a cross-bill substantially equivalent to the Bill filed in the court below by the Petitioner in this proceeding. There is also appended hereto a copy of a stipulation by which the Attorney General, the Postmaster General, and the members of the Securities and Exchange Commission, the defendants in the bill involved in this proceeding, are to be made cross-defendants to the cross-bill in the Bond and Share suits. All the issues raised by the Petitioner in its bill filed in the court below are therefore bound to be raised and determined in the Bond and Share suits.

24. The Respondents do not deny that the Bond and Share suits may be held to involve only the question of the constitutionality of Section 4 of the Act. But such a restrictive holding, affirmed by the Supreme Court of the United States, will similarly limit and determine the scope of the Petitioner's suit. For the same issues are raised by the Bond and Share cross-bill as by the Petitioner's bill. And such a holding if made will be a ruling of the Supreme Court of the United States that Section 4 is separable and that, as the Respondents have always contended, other sections of the Act applicable by their terms only to "registered holding companies", may not be attacked, nor raised by way of defense, except by a company which has already registered under Section 4.

25. The Respondents emphatically deny Petitioner's allegation that they have not attempted to show that the question of the constitutionality of the Act may well be held to be involved in a much broader and more comprehensive way under the issues presented by Petitioner's bill than those presented by the Bond and Share suits. The Respondents have always contended and specifically urged in the court below that "no fairer or broader test of the Act could be suggested" than the Bond and Share suits, that the Bond and Share system "comes in contact with the Act at more points than any
273 other holding company system" and that the Petitioner's suit is beset with jurisdictional difficulties.

26. The court below found:

"The offer of the plaintiffs to a trial of one or two of the instant cases and suspending proceedings in the others has not been consented to by the defendants. They, however, cannot answer for the fifty odd cases now pending in other courts, which, it seems probably will be transferred to this Court. I think that the plan proposed by the defendants would give all the plaintiffs all the protection needed pending a decision by the Supreme Court and save great amount of labor, time, and expense."

It is a novel suggestion that those who violate a statute on the grounds of its alleged unconstitutionality should have the right to dictate to the Government against which violator the Government should proceed for the purpose of testing the constitutionality of the Act. The Petitioner was offered an injunction which would

fully protect the Petitioner's alleged rights so far as the protection sought lay within the power of the court below. A litigant who secures from a lower court the relief he has prayed has no right to seek review by a higher court. Dieterich v. Dieterich, 48 App. D. C. 356.

27. Respondents deny that Petitioner in either paragraph 10 or paragraph 27 of its Petition has shown that a temporary injunction would be less effective than a permanent injunction to protect the Petitioner against the Respondents. What Petitioner seeks is not relief from this Court or the court below against the Respondents, but the right to force its own case or some other case of its choosing to be carried to the Supreme Court of the United States for the purpose of testing the constitutionality of the Act in general. But the Petitioner, having been offered and having refused the only protection the court below could afford, has no right, constitutional or otherwise, to an adjudication of its alleged claims by the Supreme Court. Due process even in a criminal case does not involve a right to an appeal, McKane v. Durston, 153 U. S. 684, 687; Andrews v. Schwartz, 156 U. S. 272, 275, and no one has a right to appeal from a decree in his favor for the purpose of having his future rights declared by a higher court. Dieterich v. Dieterich, supra.

28. The Respondents did urge in their briefs and on the oral argument that in their judgment the Petitioner's bill did not state a cause of action for an injunction or declaratory judgment. But the Government did not move to dismiss the bills on these grounds because it did not wish to admit the allegations of the bill even for procedural purposes. The Supreme Court has recently
274 indicated its reluctance to consider issues of constitutionality in a demurrer. Borden's Farm Products Co. v. Baldwin, 293 U. S. 194. The Government merely pointed out, as has already been indicated in Respondent's answer to paragraph 9 of Article III of the Petitioner's Petition, how grave and serious were the questions of equitable jurisdiction involved in the Petitioner's bill and how very real was the possibility that, after a long and protracted trial and successive appeals, the bill might be dismissed upon grounds of equitable jurisdiction without any consideration of the constitutional issues involved.

29. The position of the Government as stated in the argument before the court below involved no improper threat. What the Attorney General said was just this (Argument on Motion to Stay Proceedings, 24–25):

"As chief law officer of the Government, I conceive it to be my duty to exercise such powers as I possess over the course of Government litigation and appeals, to ensure that an important and far-reaching enactment of the Congress is tested fairly and expeditiously. The determination in the suit selected for the testing of this Act may not determine the validity of the Act in its application

to a few companies specially circumstanced, but it will determine the fundamental constitutional question involved and as many aspects of the Act as could possibly be determined in any one case with relation to a typical holding company. Because this is true, I have not felt it improper to suggest to the Court that I would feel justified in permitting injunctions issued in other cases by a court of first instance to go unappealed, if need be, in order that a record might be made up for the Supreme Court in the one case which will befit the great constitutional issues involved.

"Likewise, I feel warranted in suggesting that the efforts of the Government so to conduct litigation in the public interest should be recognized by staying proceedings which ultimately will be unnecessary, certainly in part and probably altogether. The granting of a stay and, if desired, a temporary injunction will enable the Court readily to adapt its decrees to the views of the Supreme Court, and will protect every legitimate interest, public and private. The Government might be content, like a private litigant, to exercise all its procedural privileges without explanation. I have, however, discussed these matters and have submitted them for the approval of this Court, because the policy I have indicated is designed not to seize technical advantages for their own sake but to serve substantial interests of the public and its Government with common sense and fairness, and to aid in the orderly disposition of the public business."

30. The announcements of the Respondents disclaiming any intention of bringing prosecutions under the Act until the adjudication of the constitutionality of the Act by the Supreme Court are fairly set forth in the opinion of the trial court.

31. The facts on which the court below granted the stay requested by the Respondents are given in the opinion of the court.

32–33. The trial court correctly stated the apparent attitude of counsel for the Petitioner and the other plaintiffs in regard to the jurisdiction of courts outside of the District of Columbia over suits to restrain the enforcement of the Act. In his Reply Brief the Attorney General stated (36–37):

275 "When the Attorney General told this Court that, in his judgment virtually all of the suits brought by the holding companies outside of the District of Columbia were clearly defective because of want of proper venue and because of the absence of power in the District Courts to issue a process for valid service outside of their respective districts, none of the counsel for the plaintiffs chose to dispute the opinions of the Attorney General. Rather, the impression was given that the correctness of the Attorney General's opinion was not denied."

After the Reply Brief of the Attorney General was filed, counsel for the Petitioner requested permission to file and filed a Rebuttal Brief, which in no way attempted to correct the impression left upon Respondents' counsel and upon the court below. Indeed there can be no question that the attempted service of process issued by courts outside of the District of Columbia upon the members of the Commission, the Attorney General and the Postmaster General, does not constitute valid service, Toland v. Sprague, 12 Pet. 300, 330; Hark-

ness v. Hyde, 98 U. S. 476, 488; Robertson v. Railroad Labor Board, 268 U. S. 619, 622. A decree against local federal officers, if granted, would not bind the Commission, the Attorney General or the Postmaster General, and would be futile and ineffective to prevent the subsequent enforcement of the Act by either the Commission or the Attorney General.

IV

The Respondents deny that the action of the court below constitutes a gross abuse of any discretion it may have had in the premises" and aver that the granting of the stay was not only justified but necessary to maintain the orderly processes of justice.

1. Sliosberg v. New York Life Insurance Co., 244 N. Y. 482, has no application to the instant proceeding. That case involved a statutory stay of a legal cause of action and bore no relation to a stay granted by a court of equity to maintain its own orderly processes of justice, particularly when such stay is accompanied by an offer of a temporary injunction according to the plaintiff during the period of the stay as much relief as he could obtain by a final decree. The nature of the Petitioner's suit is such that the delay cannot prejudice its case. There is no risk of the loss of evidence or witnesses. The delay will save the Petitioner and its shareholders the cost of an unnecessarily long and protracted trial.

2. There is no rigid rule of law such as Petitioner's counsel assumes that a court of equity may not, in order to maintain the orderly processes of justice, stay its own proceedings until the disposition of some other proceeding, unless the parties and the issues in the
276 two proceedings are identical. Such identity is not required even where equity is asked to extend its affirmative aid in enjoining the prosecution or continuance of proceedings in other courts. "Avoidance of the burden of numerous suits at law between the same or different parties, where the issues are substantially the same, is a recognized ground for equitable relief in the federal courts", Di Giovanni v. Camden Fire Ins. Assn., 296 U. S. 64, 70, decided November 11, 1935. A rule which does not rigidly prevail even where affirmative relief is asked, cannot apply to a "mere stay of proceedings." Enelow v. N. Y. Life Insurance Co., 293 U. S. 379, 381.

3. The trial court in a carefully prepared opinion has concluded that the stay as allowed was necessary to maintain the orderly processes of justice, and would afford the Petitioner "all the protection needed pending a decision by the Supreme Court and save a great amount of labor, time, and expense." Its action contravened no rule of law or of equity and constituted a fair and judicious exercise of its discretion. Petitioner's extravagant charge that the action of the trial court constituted "a flagrant abuse" of discretion is wholly unsupported and unsupportable by any specific allegations of its Petition or by anything in the proceedings below.

(a) The Respondents in a full and elaborate argument convinced the trial court that the suits brought by the Government against the Bond and Share Companies in their domiciliary jurisdiction in the Southern District of New York were entitled to preference, that such proceedings would be tried promptly, and that they would be tried before the proceedings in this Court, for which the Government was not prepared, could be tried.

(b) The Respondents aver that the stayed suits are no more or less substantially identical with one another than with the Bond and Share suits and that the Bond and Share suits are free of many jurisdictional questions which complicate the stayed suits.

Respondents do not deny that the suits stayed involve substantially similar issues. But counsel for Petitioner in the court below did not urge but denied that the suits stayed were substantially identical. He contended in particular that the American Water Works Company case presented an "absolutely unique" state of facts. He accordingly urged that both cases in which he was counsel, i. e., The North American and American Water Works cases, should be tried, possibly as a consolidated suit.

(c) It is misleading for the Petitioner to allege that the court below which granted the stay cannot control the Bond and
277 Share suits. The court below may withdraw the stay whenever it deems it necessary or proper; and the stay is expressly conditioned upon a diligent and active prosecution of the Bond and Share suits.

(d) A comparative examination of the pleadings will demonstrate that there is not the slightest basis for Petitioner's assertion that the suits stayed will even "probably" be broader or more comprehensive than those in the Bond and Share suits (See Respondents' answer to paragraphs 22 and 23 of Article III of the Petitioner's Petition).

(e) As the trial court found, neither the Petitioner nor any of the other parties stayed could show that they would suffer any irreparable injury from the stay. The practical proof of that absence of injury is that such parties have not even chosen to avail themselves of the temporary injunction offered to them which provides them as full protection as could be provided by any permanent decree of the court below.

(f) The so-called offer made by the parties stayed to select for trial a few of the entire number of suits brought by the holding company interests indicates clearly that the Petitioner's suit and other suits have been brought not to protect alleged constitutional rights but to force the Government to bring to the Supreme Court for adjudication such test suits as the dominant holding company interests may dictate.

4. (a) The Petitioner does not deny that suits brought in other jurisdictions may be recommenced in this District if the stay granted were vacated.

(b) The Petitioner complains that the Respondents have not moved to dismiss the Petitioner's bill for jurisdictional defects. The reasons which prompted the Respondents not to move to dismiss have already been explained in Respondents' answers to paragraphs 8 and 28 of Article III of the Petitioner's Petition. The Petitioner has not been so rash as to assert to this Court, as it asserted to the court below, that its bill was free from any jurisdictional difficulty.

(c) The position taken by the Attorney General in the court below is fully set forth in the answer to paragraph 29 of Article III of the Petitioner's Petition.

5. The Petitioner does not deny that unless the proceedings below were stayed, the Respondents would be entitled to extensive continuance and postponements to enable them properly to prepare their defense. The Petitioner has not, and could not, deny that such
278 continuances would not delay the final adjudication of its rights far beyond the time when the Bond and Share suits would be disposed of.

6. The Respondents urged before the court below and urge here that an examination of the pleadings in the Bond and Share suits and in the suits stayed will show that both sets of suits involve substantially identical issues of law and of fact. In representing to this Court that the Respondents urge merely that the Bond and Share suits would serve as a "'valuable precedent' on some of the issues which will ultimately have to be tried in the cases that are stayed", the Petitioner has not fairly stated Respondents' position. What the Attorney General stated in his Reply Brief (page 24) was:

"The factual situations in the plaintiffs' suits and in the Bond & Share suits are, therefore, sufficiently similar to raise substantially the same questions of law, and to make the trial of the facts in the Bond & Share suits a valuable precedent for the treatment of facts when and if cases now before other courts come up for trial."

The Respondents' position is even more specifically explained in their answer to the allegations of paragraphs 22 and 23 of Article III of the Petitioner's Petition.

7. The Petitioner has not ventured squarely to question the power of the court below to grant the stay. The authorities were exhaustively briefed for that court, and Petitioner did not cite any authoritative precedent for denying the stay. That the discretion of the trial court was fairly and judiciously exercised is apparent from a reading of its opinion.

Wherefore, the Respondents pray that the Petition for an allowance of a special appeal from the order of Mr. Justice Bailey entered herein on the ninth day of January 1936 be dismissed.

HOMER CUMMINGS,
Attorney General of the United States.

JOHN J. BURNS,
General Counsel,
Securities and Exchange Commission.

279 UNITED STATES OF AMERICA, *District of Columbia, ss:*

HOMER CUMMINGS, being first duly sworn, on oath deposes and says that he is Attorney General of the United States and one of the attorneys for the Respondents; that he is informed and believes, and therefore avers that the facts set forth in the Objections to Allowance of Special Appeal are true.

HOMER CUMMINGS.

Subscribed and sworn to before me this 27th day of January 1936.

[SEAL] UGO J. A. CARUSI,
Notary Public.

281 Wednesday, April 8th, A. D. 1936

* * * * * * *

No. 6654

THE NORTH AMERICAN COMPANY, APPELLANT

vs.

JAMES M. LANDIS, GEORGE C. MATHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY &C., ET AL.

No. 6655

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, APPELLANT

vs.

JAMES M. LANDIS, GEORGE C. MATHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY &C., ET AL.

The argument in the above entitled causes was commenced by Mr. John C. Higgins, attorney for appellants, and was continued by Mr. Homer Cummings, Attorney General of the United States, for appellees, and was continued by Mr. Robert H. Jackson, attorney for appellees, and was concluded by Mr. John C. Higgins, attorney for appellants. On motion, appellants allowed to file reply brief, and appellees allowed to file additional memorandum. (Mr. Justice Robb not sitting.)

282 United States Court of Appeals for the District of Columbia

No. 6654

THE NORTH AMERICAN COMPANY, APPELLANT

v.

JAMES M. LANDIS, GEORGE C. MATTHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY &C., ET AL., APPELLEES

No. 6655

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, APPELLANT,

v.

JAMES M. LANDIS, GEORGE C. MATTHEWS, ROBERT E. HEALY AND JAMES D. ROSS, INDIVIDUALLY &C., ET AL., APPELLEES

Appeals from the Supreme Court of the District of Columbia

Decided June 22, 1936

F. D. McKenney, John S. Flannery, G. Bowdoin Craighill, and John E. Larson, all of Washington, D. C., and John C. Higgins, of New York City, for Appellants.

Homer S. Cummings, Robert H. Jackson, Benjamin V. Cohen, and Robert E. Kline, Jr., all of Washington, D. C., for Appellees.

Before MARTIN, Chief Justice, and VAN ORSDEL, GRONER, and STEPHENS, Associate Justices

VAN ORSDEL, Associate Justice. This is a special appeal from an interlocutory order of the Supreme Court of the District of Columbia staying further proceedings in plaintiffs' suits against the appellees, defendants below. The order staying further proceedings in these suits was passed to await final determination by the Supreme Court of the United States in the case of the Securities and Exchange Commission v. Electric Bond and Share Company et al., now pending in the District Court of the United States for the Southern District of New York, or until such time as the case is otherwise terminated.

These suits are for injunctions to restrain the defendants, on the ground of unconstitutionality, from enforcing the provisions of an Act of Congress approved August 26, 1935, Public, No. 333, 74th Cong., 1st Sess., entitled, "An Act to provide for control and regulation of public-utility holding companies, and for other purposes." The plaintiffs are holding companies of the class which is required by the Act to register with the Securities and Exchange Commission not later than December 1, 1935. Plaintiffs have not registered, and in their bills declare their intention not to register.

283 The North American Company filed its bill on November 26, 1935, and the American Water Works and Electric Company, Incorporated, filed its bill the next day. The bills invoke the equitable jurisdiction of the court because of irreparable injury which it is averred the Act is already causing plaintiffs, and which plaintiffs will continue to suffer in ever increasing measure until final relief is afforded. The bills set forth fully the basis of the court's jurisdiction, the nature and character of plaintiffs' business, the provisions of the Act applicable to the plaintiffs, the grounds for plain-

tiffs' belief that defendants intend to enforce the Act against them, the reasons why plaintiffs are irreparably damaged through the threatened enforcement against them by defendants of the provisions of the Act, that this damage will be sustained whether plaintiffs register under the Act or not, and the reasons why, in the judgment of the plaintiffs, the Act is unconstitutional.

Simultaneously with the filing of the bills in the plaintiffs' cases, the Securities and Exchange Commission, hereinafter referred to as the Commission, filed a bill against the Electric Bond and Share Company and five of its corporate subsidiaries in the United States District Court for the Southern District of New York. That case will be hereinafter referred to as the Bond & Share case. At approximately the same time that plaintiffs filed their bills, some 48 other bills were filed in the various United States District Courts by other companies seeking substantially the same relief as that sought by the plaintiffs, and at about the same time, and prior to December 1, 1935, five other holding companies filed bills in the Supreme Court of the District of Columbia, seeking substantially the same relief sought by the plaintiffs.

On December 7, 1935, before any answer had been filed by the defendants herein, or by the defendants in any of the above-mentioned suits in the Federal District Court, or by the defendants in the Bond & Share case, the defendants herein moved for a stay of proceedings to await the final determination of the Bond & Share case. The grounds advanced in support of the motion for the stay were the pendency of the above-mentioned 48 suits in the federal courts; that the Commission had instituted the Bond & Share case for the purpose of determining the constitutionality of the Act, and that it would be prosecuted with all due diligence to the Supreme Court; that the other pending suits would "tend to clog the courts, overtax the facilities of the Government, and make against that orderly and economical disposition of the controversy that is the Government's aim."

On hearing, the court sustained the motion in the following order:

"This cause coming on to be heard upon motion of the defendants to stay further proceedings herein filed December 7, 1935, the Court having considered the pleadings and the arguments of counsel, and briefs having been submitted herein, it is this 9th day of January 1936:

"Ordered, adjudged, and decreed, that further proceedings herein be and are hereby stayed, upon the terms and conditions as set forth in the Opinion of this Court in this cause filed herein the 6th day of January 1936."

In the course of his opinion the court called attention to the grounds upon which plaintiffs opposed the motion for the stay, to the tender of the defendants to submit to a temporary injunction
284 pending a decision by the Supreme Court in the Bond & Share case, and to the contention of plaintiffs "that many of the

questions as to the constitutionality of the Act involved in these cases are not involved in the Electric Bond and Share case, and that even if the defendants were temporarily enjoined the plaintiffs would in the meantime suffer irreparable injury by the existence of this act upon the statute books, which would affect the validity of their contracts, their transfer of stocks, and other similar matters."

The court then said:

"In the instant case the relief sought by the plaintiffs is first a relief by injunction against the defendants, and second a declaratory judgment to the effect that the Public Utility Holding Company Act violates the Constitution of the United States and that the Act and each and every part thereof is invalid, null, and void. * * *

"'* * * Courts do not declare statutes constitutional or unconstitutional as such. The judicial function is to determine whether or not under the facts proven at the trial, the application of the legislative enactment to the litigant before the Court invades his constitutional rights.'"

We think, from an examination of the bills in the present cases and the bill in the Bond & Share case, which appears in the record, that many questions arise in the instant cases which would not and could not be disposed of in the Bond & Share case. The sole question, therefore, for our consideration is whether or not the court below was justified in granting the stay in these cases; whether or not in so doing the court abused its discretionary power in the control of its docket.

Unquestionably a court has wide discretionary power in the matter of the order in which cases pending on its docket shall be tried, provided always that undue delay is not occasioned, to the damage of litigants. This power extends to the determination of which of two cases, pending in the same court or in courts of similar jurisdiction and involving the same issues and the same parties, shall be first heard, but this situation does not obtain in the present controversy. These cases are pending in courts of different jurisdictions, the parties are not the same, the issues involved are not such that the determination of one case would constitute a full determination of the others, nor are there present any of the conditions which would justify depriving plaintiffs of their day in court and an opportunity to be heard. Their bills have been filed, and without even an answer on the part of the defendants, or the bringing of the cases to issue, which might tend to clarify the issues involved, plaintiffs have been deprived, by an order of the court, of their day in court and an opportunity to be heard. They have been stopped in limine and denied the privilege of proceeding further for an indefinite period of time, subject to all the uncertainties surrounding the final determination of the Bond & Share case.

The stay cannot be justified on the ground that the decision in the Bond & Share case may "simplify" the issues or furnish a "valuable

precedent" for the determination of the present cases. Indeed, from a comparison of the bill in the Bond & Share case with the bills in the instant cases, it is difficult to conclude that a decision of the Bond & Share case would dispose of all the issues in the present cases. In Rosenberg v. Slotchin, 181 App. Div. 137, 138, 168 N. Y. S. 101, 102, the rule is stated as follows:

285 "It is only where the decision in one action will determine all the questions in the other action, and the judgment on one trial will dispose of the controversy in both actions that a case for a stay is presented. (Dolbeer v. Stout, 139 N. Y. 486, 489; Ogden v. Pioneer Iron Works, 91 App. Div. [N. Y.] 394, 396; Consolidated Fruit Jar Company v. Wisner, 38 id. 369, 375.)"

The Rosenberg Case is also authority for the rule that under no circumstances will a stay in an action be granted until the issues are made.

It is urged that the issues of law in plaintiffs' cases will be greatly simplified by the determination of the Bond & Share case. "Such a conflict, if it exists, is no valid ground for the staying of the plaintiff's proceedings, nor is there any warrant for such a stay to be found in the uncertainty of the law on any question, however unsettled the law and conflicting the decisions." Jenkins v. Baker, 91 App. Div. (N. Y.) 400, 402, 86 N. Y. S. 958, 959.

Where it appears that a party whose suit is sought to be tried has no remedy against his adversary except in the court in which he has brought his action, the opposing party, not having answered or brought the case to issue, is in a poor position to plead for delay. Nor is the plea of the Department of Justice in the present case that it is not equipped to handle the numerous cases which have arisen, because it is involved in other litigation, a valid ground for a blanket stay in limine of all further proceedings in the present cases for an indefinite and protracted period.

The government of the United States as a litigant has no greater rights than the humblest citizen. While we recognize the difficulty which confronts the Department of Justice in conducting the vast amount of litigation in which the various agencies of the government have become involved, as well as the duty of the courts to be indulgent where possible in the public interest, yet the rights of the citizen are not to be overlooked. He is entitled to be heard in the courts in defense of his rights if he honestly believe that they have been invaded to his damage, even by an agency of the government. These rights may not be disregarded, to the damage of the litigant, because of any question of mere governmental convenience or public interest, and the discretion of the court should not be swayed by any of these considerations so as to deprive the litigant of his day in court and a prompt and speedy trial.

While it is true that a court of equity has wide discretion, in the public interest, in the exercise of its jurisdiction, yet it may not stay its hand because of such interest if by so doing private rights will

suffer. Pennsylvania v. Williams, 294 U. S. 176, 185. That the rights of the plaintiffs in the present cases would suffer by reason of the stay granted, is apparent, since the very existence of the Act, whether they register under it or not, must of necessity affect materially the conduct of their business during the pendency of these suits.

The order is reversed.

Separate Opinion of Judge GRONER

GRONER, Judge: Very shortly after this suit was begun, the Attorney General filed in the trial court a motion to stay proceedings. In the motion he said that there had been filed in ten District
286 courts of the United States at least forty-eight bills of complaint in behalf of 147 plaintiffs, all of which similarly sought to enjoin the enforcement of the Act of Congress approved Aug. 26, 1935, known as the "Public Utility Holding Co. Act of 1935." The Attorney General informed the court that he was anxious to secure an early determination of the constitutionality of the Act and to that end he had had the Commission institute a suit in the Southern District of New York against Electric Bond and Share Company and that the suit would be prosecuted with due diligence to secure from the Supreme Court an authoritative determination of the validity of the Act. On the ground that the pending suits would clog the courts and overtax the facilities of the government and militate against an orderly disposition of the controversy, he asked the court to stay proceedings in the instant case. The Attorney General offered to submit to a temporary injunction pending a decision by the Supreme Court in the Electric Bond and Share case. The court, after hearing, entered an order staying all proceedings pending a decision by the Supreme Court, on condition that the Bond and Share case be diligently prosecuted.

On this appeal the question for our decision is whether the lower court had the right and power to enter the order—and if it had the power, whether the entry of the order in the form in which it appears was an abuse of discretion.

Undoubtedly a Federal District Court may grant a stay in a cause pending before it and may enter such other orders as may be necessary to control the progress of the cause in the interest of justice. Ordinarily such orders are within the sound discretion of the court. A stay of proceedings is sometimes granted for the accommodation of counsel, sometimes because of the absence of witnesses, sometimes because of illness on the part of counsel or witnesses, sometimes to avoid a multiplicity of suits, sometimes to avoid a conflict of jurisdictions, and perhaps for other grounds which do not occur to me at the moment—all of which show that the right exists. But in every instance that I know of in which a stay has been asked and opposed, the right—where it has been exercised—has been exercised with caution and with the assurance on the part of the court that the rights

of the plaintiff will not suffer by the delay. Any other course would be obstructive of justice.

Here the learned judge of the lower court points out that the defendants have offered to submit to a temporary injunction pending a decision by the Supreme Court in the Electric Bond and Share case; and this, he says, will afford just as full relief as a decision in this suit holding the challenged Act of Congress unconstitutional. If, from an examination of the record, I could say that the court's conclusion in this respect were correct, it would be difficult to find any reason for disturbing the order; but I think the conclusion is not sustainable. As is stated by Judge Van Orsdel, there is a marked difference between many of the issues in this case and in the Bond and Share case due primarily to a different corporate set-up; and careful examination of the Act and of the purposes of the two suits shows that even though the Act of Congress may be constitutional as to the Bond and Share Company, it may be unconstitutional
287 as to these plaintiffs. In short, that a decision in the one case will not foreclose all questions in the other. Nor is there doubt that the provisions of the Act, even if they ultimately be held unconstitutional, seriously affect the business and affairs of these plaintiffs pending the determination of that question. In that view they are clearly entitled to a speedy trial.—"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, at p. 163. But I mention these matters merely in passing. In my opinion the order entered by the lower court is not such a stay-order as a court ought ever to enter as a matter of discretion. It is substantially an injunction against these plaintiffs, preventing them for an indefinite period from litigating a question of legal rights which they insist the Act of Congress unlawfully impairs. If, instead, the stay had been temporary, if the court had announced that it would not set the case for trial except at the reasonable convenience of the parties, I would think its action well within its discretion. But here we are confronted with an order restraining litigants from prosecuting their case, grounded upon the theory that, because it would seriously inconvenience the Attorney General to try a number of cases at one time, a selection may be made and the others suspended, not temporarily, for that in the circumstances would have been reasonable and proper, but indefinitely—even where the parties are different and the rights and interests not identical.

In addition to all of this, the motion was made without bringing the case to issue. No answer or pleading of any kind in defense have been filed. The order was entered at the very threshold of the court. In any case, this is premature. The trial court should require defendants to bring the case to issue and then—if the circumstances are such as indicate that no harm will be done in a reasonable postponement of the trial—it may very well be that the court, in the

exercise of its discretion, can delay the trial temporarily.—In other words, take such action in relation to the progress of the cause on its own docket as may then seem to it equitable and fair. But the present order goes beyond that limit and in that respect was improvidently entered.

STEPHENS, Associate Justice, dissenting.

I am unable to agree that the trial court abused its discretion. The facts, as I understand them, are these: The appellants (plaintiffs below, and hereinafter called plaintiffs), the North American Company and the American Water Works and Electric Company,[2] public utility holding companies, each filed a suit in the Supreme Court of the District of Columbia seeking to enjoin enforcement of Title I of the Public Utility Act of 1935 (hereinafter referred to as the "Act"), alleging threats of enforcement by the appellees (defendants below, and hereinafter called defendants), the members of the Securities and Exchange Commission, the Attorney General, and the Postmaster General; and the plaintiffs sought a declaratory judgment that the Act, in all of its parts, was unconstitutional.

They had refused to register under the Act, thereby subjecting
288 themselves, so they asserted, to grevious prohibitions against, and penalties upon, divers of their business activities. But they said also that if they did register, they would become subject to regulation, control, and reorganization, pending ultimate dismemberment and destruction under Section 11, the so-called death sentence provision, of the Act. They asserted further that the existence of the Act clouded title to their investments, interfered with their freedom of contract, and injured their credit—all to their irreparable damage. Five other similar suits had been filed by holding companies against the same defendants in the Supreme Court of the District of Columbia. In ten or more other Federal courts in various parts of the United States, forty-nine additional similar suits had been filed against agents of the Securities and Exchange Commission, United States District Attorneys, representatives of the Post Office Department, and the defendants in the instant cases. But for lack of personal service upon the latter, it was not unlikely that these suits, or many of them, would be brought to a conclusion by either dismissal or default, and that in their stead new suits would be filed in the Supreme Court of the District of Columbia. On or about the same date that the plaintiffs' suits were filed, the Securities and Exchange Commission commenced, in the United States District Court for the Southern District of New York, a suit against the Electric Bond and Share Company and five of its principal subsidiaries; and there were later by supplemental bill of complaint brought into that suit sixteen more members of the Electric Bond and Share Company system. The New York suit was brought under Section 18 (f) and

[2] The full names of the companies are "The North American Company" and "American Water Works and Electric Company, Incorporated."

Section 18 (g) of the Act to compel the defendants to register and to restrain them from activities prohibited in the absence of registration. It was a test case comprehensive in nature.

In these circumstances, the defendants in the instant case moved to stay all the proceedings relating to the validity of the Act until its validity had been determined by the Supreme Court of the United States in the New York suit, or until that case otherwise terminated. This motion was supported by oral and documentary representations which, for the purposes of this appeal, were by stipulation embodied in an affidavit and exhibits made a part thereof (including the bill of complaint and the amended and supplemental bill of complaint in the New York suit). In substance these representations were that: There would be a substantial identity of issues in the local suits and in the New York suit; all of the suits were complex; the local suits would require extensive investigations of fact at great expense in both funds and time before answers could be formulated and filed; the preparation and trial at the same time of the local suits and the New York suit would overburden the Commission and its counsel; the trial of the local suits would overburden the Supreme Court of the District of Columbia. In moving for the stay the defendants offered the following terms: They would not enforce the Act as against the plaintiffs until it had been determined to be constitutional by the United States Supreme Court in the New York suit, and then only in respect of acts or omissions thereafter occurring; and they would submit to a temporary injunction against enforcement of the Act.

The motion for a stay was resisted by the plaintiffs upon the grounds, in substance, that: The issues in the local suits and
289 in the New York suit would not be the same; even if the defendants were subjected to an injunction, still the existence of the Act would injure the plaintiffs' business in the manner asserted in their bills of complaint. To the latter ground the defendants rejoined that no more prompt determination of the constitutionality of the Act was probable in the local suits than in the New York suit.[3]

The problem thus presented to the trial court by the motion to stay and the plaintiffs' opposition thereto was administrative in nature, not substantive, that is to say, it was one which a court decides according to its discretion, rather than under a rule. Where a court acts by rule, it can decide but one way without error. But where its decision is according to discretion, it may decide in either of two (and sometimes more) ways without disturbance of its ruling on appeal—provided its decision is actuated by proper and adequate representa-

[3] The defendants further rejoined that they had made widespread public announcement that the Act would not be enforced until the determination of its constitutionality by the United States Supreme Court in a test case, and had instructed the agents of the Commission, District Attorneys, and postmasters throughout the United States to such effect; and that in these circumstances, or if the temporary injunction were imposed, the plaintiffs could present no case or controversy for determination of the constitutionality of the Act in respect of its mere existence.

tions or data, and is not unreasonable in respect of the rights concerned.

Were the representations and data before the trial court proper and adequate? The points especially urged in support of the motion to stay were the complexity and burdensomeness of the local and the New York suits, and the substantial identity of issues therein. As to the former: The contents of the affidavit of the Attorney General and of the bills of complaint in the several causes were, we think, sufficient to inform the court of the nature of the suits and to warrant it in concluding that they would be complex and burdensome in respect not only of the requisite preparation but in respect also of the time required for trial. Indeed, there was no substantial dispute on this topic except that the plaintiffs offered to reduce the local litigation to a few test cases. But the court was not bound to conclude from the representations on this subject that this was within the power of the plaintiffs. As to the substantial identity of the issues: In the technical sense the pleadings were not closed, that is to say, at the time the motion to stay was presented to the trial court, no answers had been filed in either the local suits or in the suit in New York. But it is to be borne in mind that the stay was not asked for upon the ground that a decision in the New York suit would, in the technical sense, be res judicata as to the local suits. This it could not be, for lack of technical identity of parties. The proposition advanced was that the rulings in the New York suit would be practically fruitful to simplify, if not to dispose of, the local litigation. In this view, I think formal answers are not the only data which a court may properly consider in reaching a conclusion. It may consider oral representations and documents, apparently informative and reliable. Such data the trial court had before it through the Attorney General, counsel for the Commission and the plain-
290 tiffs' counsel. It would serve no useful purpose to set forth in detail the data, oral and documentary, which, it appears from the record and briefs, was thus presented to the trial court. Briefly, however, it included material informing the court that: The plaintiffs are parent public utility holding companies; they own stock[4]—more than 10% of the voting securities—in subsidiaries; some of the subsidiaries are themselves holding companies, and some are operating companies; the holding subsidiaries themselves own stock in holding companies and operating companies. The business of the systems (so far as is relevant to the litigation) is the production and marketing of electricity and gas. This is transmitted across state lines by the operating companies which are subsidiary to the holding companies which are themselves immediately subsidiary to the parent holding company. Service, sales, and construction contracts (forbidden by the statute in the absence of registration) involving interstate commerce exist in the plaintiff North American Company system between at least one holding company immediately

[4] It is such ownership that, under the Act, constitutes a company a holding company.

subsidiary to the parent on the one part, and its subsidiaries on the other. Similar service, sales and construction contracts exist between the plaintiff American Water Works and Electric Company, the parent itself, and its subsidiary operating companies; and at least one immediate holding subsidiary of the American Water Works and Electric Company has entered into service, sales, and construction contracts with its subsidiary operating companies. Neither of the plaintiff parent companies nor any of the companies within their systems has registered.

In the New York suit the defendant Electric Bond and Share Company is a parent public utility holding company; it owns stock in subsidiary holding companies, each of these is the parent of a system comparable in character and extent to the system of which each of the plaintiffs is a parent; these holding companies immediately subsidiary to the parent Electric Bond and Share Company, or a part of them, severally own stock in holding companies and in operating companies. The last mentioned holding companies, or a part thereof, in turn severally own stock in holding companies, which latter again own stock in operating companies. The business of the system (so far as is relevant to the litigation) is the production and marketing of electricity and gas. This is transmitted across state lines by the operating companies. All of the above mentioned companies, holding and operating, or such of them as typify the structure and activities described, are defendants in the New York suit. Service, sales, and construction contracts involving interstate commerce exist, in the Electric Bond and Share system, between a company immediately subsidiary to the parent Electric Bond and Share Company, and a company immediately subsidiary to that subsidiary, on the one part, and the holding companies immediately subsidiary to the parent, and their operating subsidiaries, on the other. Neither the parent Electric Bond and Share Company nor any of the companies within its system has registered. The local suits and the New York suit were brought for the purpose of testing the consti-
291 tutionality of the Act in all of its parts, in respect of the activities of the systems, and of the units thereof, respectively involved.

With such information before it concerning the local suits and the New York suit, and especially in view of the common object of the suits, I think the trial court could reasonably conclude that the New York suit would probably yield rulings as to the constitutionality of the Act and its parts, as to the separability of the parts, as to what is interstate commerce for electric and gas public utiliy holding companies—whether acting through immediate subsidiaries or through those more remote in the corporate structure—as to the constitutionality of the registration provision as such, and as to the effect upon the constitutionality of the registration provision of the prohibitions and penalties attendant upon non-registration and of the supervisory powers given to the Commission in the event of registration, including the effect of Section 11. And I think that the trial court could

reasonably conclude that these rulings would be in respect of stautory and factual patterns enough like those involved in the local suits to make the rulings in the New York suit practically fruitful for simpli'cation, and perhaps for disposition, of the local suits, even though the rulings in the New York suit would not be strictly res judicata as to the local suits. I conclude, therefore, that the court's decision was actuated by proper and sufficient representations and data.

Was the court's decision reasonable in respect of the rights of all concerned? As to the length of the stay, it is suggested that it is never to end except upon the determination in the New York suit of the validity of the Act by the Supreme Court of the United States, or until the termination of that suit otherwise. The stay motion was in such terms, literally, made, but it was not in such terms granted. It was "Ordered . . . that further proceedings . . . be and are hereby stayed, upon the terms and conditions as set forth in the Opinion of this Court . . ." The opinion indicates that the stay was granted for a definite purpose and upon definite conditions. The purpose was the saving of a "great amount of labor, time, and expense" through a prior decision in the New York suit, which "even if it should not dispose of all the questions involved, would certainly narrow the issues in the pending cases and assist in the determination of the questions of law involved."[5] The conditions were "a diligent and active prosecution of the Electric Bond and Share case." Moreover the court said that "In view of their assurances [the court was referring to the announcements, above referred to,[6] of the Commission, the Attorney General, and the Postmaster General] given before the filing of these suits, however, it would hardly seem necessary to issue a formal injunction, unless the plaintiffs insist upon it." The plaintiffs did not insist upon it and no formal injunction was entered; but clearly the stay was conditioned upon non-enforcement of the Act. The order is interlocutory in nature and therefore
292 remains within the control of the court which made it. If, during the progress of the New York suit it is made to appear to the trial court that the purpose of the stay will not be served, or that its conditions are not being fulfilled, the trial court may, and I think it should be assumed will, terminate the stay. Thus, if it is made to appear, as the New York suit progresses, that the issues of fact and law therein are not to be what, at the time of the stay order, the trial court reasonably concluded they would be, so that rulings fruitful for the local suits are improbable and labor, time and expense therefore not to be saved, or if it is made to appear that the New York suit is not being diligently prosecuted by the Commission or that, for whatever reason, it is not going forward actively, then the trial court will, I have no doubt, terminate the stay. Or if it

[5] Presumably the court had in mind the saving of labor, time, and expense not only for the parties and counsel but also for itself, a court of the same sovereignty as, and a court of parallel jurisdiction with, the United States District Court for the Southern District of New York.

[6] In footnote 2.

should be made to appear that the assurances of non-enforcement are not being adhered to, the trial court will impose an injunction, or terminate the stay.[7]

But the terms of the stay were such that, if its conditions remain fulfilled and its purpose continues probable of accomplishment, it may operate for a substantial period of time, and thus the plaintiffs' day in court in their own cases may be substantially postponed. But I am unable to agree that this makes the stay unreasonable. The right of the plaintiffs to be heard with reasonable promptness was not the only right involved in the administrative problem confronting the trial court. There was also the right of third parties—the plaintiffs and defendants in the various cases, civil and criminal, in the usual course of the judicial business of the Supreme Court of the District of Columbia—to seasonable trials; and there was, in addition, the right of the public through its agents, the defendants, to an adequately presented defense of the cases brought by the plaintiffs locally and of the many other similar cases not unlikely to be tried locally, and to an adequate and comprehensive test of the constitutionality, in the New York suit, of a statute of great public significance. Whatever solution of the administrative problem the trial court reached would affect all of these rights. It was inevitable from the very nature of the problem that at least one of them would be to some extent impaired: The exercise of the plaintiffs' right to a reasonably prompt day in court had, obviously, to a large extent been made unnecessary by the agreement of the defendants not to enforce the statute—this agreement to be made good by injunction if necessary; that is to say, the plaintiffs had in large part gained by this agreement what they would have gained by immediate and successful prosecution of their causes. Nevertheless, it is obvious also that their right to a reasonably prompt day in court (to the extent it may have been necessary for a ruling in respect of the mere existence of the statute and its cloud on their business, irrespective of enforcement—assuming in the plaintiffs' favor that there would have been a case or controversy for such a ruling) was impaired, through postponement, by the trial court's decision granting the stay. But a decision to the contrary, denying the stay, would have impaired the other rights involved: For the court to deny the stay was for the court to bring on for trial the plaintiffs' cases, complex and burdensome, not unlikely the five similar cases already filed locally, not unlikely forty-nine
293 others filed elsewhere but without jurisdiction of the defendants, and not inconceivably many more. Under the plaintiffs' theory each utility must in its own protection present its own case on its own facts. This would be to clot the flow of justice and to defer the day in court of the third party plaintiffs and defendants seeking to litigate their causes, civil and criminal; and this would

[7] It was suggested by the plaintiffs that possible successors in office of the defendants might not feel bound by the present assurances of non-enforcement.

be to engage the Commission and its counsel on so many legal battle fronts at once as likely to make inadequate their preparation and presentation of a defense in the local suits, and their preparation and presentation of a plaintiff's case in the comprehensive test suit in New York. Moreover, in no effective manner could such impairment of the rights of third parties and of the public be minimized by the plaintiffs or by the court as was impairment of the plaintiffs' right minimized by the defendants—so far as enforcement of the statute is concerned—through the agreement of non-enforcement, and, virtually by the court, through injunction. Even a middle course ruling—allowing the defendants short stays from time to time in the local cases rather than ruling categorically for or against the stay motion—would have been a ruling differing largely in form rather than in substance from the granting of the stay, and would hardly better have protected the plaintiffs. In short, it was inevitable that whichever way the trial court ruled, it would to some extent impair some of the rights involved. In these circumstances it cannot, I think, be said that the trial court was guilty of an abuse of discretion in granting the stay, for the same reasoning would make it guilty of abuse if it denied the stay, or took the middle course; this is reductio ad absurdum; the court could not decide at all.

I think no useful purpose would be served by a detailed discussion of the many authorities presented in the briefs on both sides. They differ so substantially in their facts from the instant problem that they do not constitute persuasive rulings. Indeed, there is no real dispute as to the ultimate proposition here involved, that is to say, as to the existence of power in a trial court, provided it acts upon proper and adequate data and reasonably, to solve according to discretion, rather than rule, and free of review, an administrative problem involving conflicting rights. In Kansas City Sou. Ry. v. United States, 282 U. S. 760, 763, the Supreme Court said:

"The question is thus one for the sound discretion of the District Court, in which such a suit is brought, to determine whether it should be permitted to continue or proceedings therein should be stayed, pending the final outcome of an earlier suit for the same purpose, to the end that there may not be a multiplicity of suits without substantial reason."

I think that the decision of the trial court—permitting an adequate and comprehensive test of an act the meaning and constitutionality of which it was important to the public at large to have determined, but permitting this upon terms which gave to the plaintiffs in large part what they would have gained by immediate and successful trial of their causes (thereby minimizing the consequence of postponement thereof), probably saving the parties and counsel and the courts much duplication of labor and expense, and keeping the Supreme Court of the District of Columbia free to carry on, in the usual course, its general judicial business—was a reasonable decision, properly within the scope of the trial court's discretion.

I think that the order of the trial court should be sustained.

294 Monday, June 22nd, A. D. 1936

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No. 6654. April Term, 1936

THE NORTH AMERICAN COMPANY, APPELLANT

vs.

JAMES M. LANDIS, GEORGE C. MATTHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY, &C., ET AL.

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the order of the said Supreme Court in this cause be, and the same is hereby, reversed, and that this cause be and the same is hereby remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

Per MR. JUSTICE VAN ORSDEL.

JUNE 22, 1936.

Separate opinion by Mr. Justice GRONER.

Dissenting opinion by Mr. Justice STEPHENS.

Mr. Justice ROBB took no part in the consideration or decision of this case.

295 United States Court of Appeals for the District of Columbia

No. 6654

THE NORTH AMERICAN COMPANY, APPELLANT

v.

JAMES M. LANDIS ET AL., APPELLEES

Designation of record

Now come James M. Landis, George C. Mathews, Robert E. Healy, James D. Ross, Homer Cummings, and James A. Farley, appellees in the above-entitled cause, and designate the following for inclusion in the transcript of record to the Supreme Court of the United States:

1. Printed record in the Court of Appeals.
2. Petition for allowance of special appeal.
3. Objections to allowance of special appeal.
4. Minute entry showing argument of cause.
5. Opinions of the Court of Appeals.

6. Decree of the Court of Appeals.
7. This Designation of Record.
8. Clerk's Certificate.

ROBERT H. JACKSON,
Assistant Attorney General and Special Counsel to the Securities and Exchange Commission.
Benjamin V. Cohen,
BENJAMIN V. COHEN,
Special Assistant to The Attorney General.

Service of a copy of the above Designation of Record is hereby acknowledged.

J. S. FLANNERY.

Dated: Washington, D. C., July 8, 1936.

(Endorsed): No. 6654. The North American Company, Appellant, v. James M. Landis et al. Designation of Record. United States Court of Appeals for the District of Columbia. Filed July 8, 1936. Moncure Burke, Clerk.

296 United States Court of Appeals for the District of Columbia

I, Moncure Burke, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing printed and typewritten pages numbered from 1 to 295, inclusive, constitute a true copy of the transcript of record and proceedings of the said Court of Appeals as designated by counsel for Appellees in the case of The North American Company, appellant, vs. James M. Landis, George C. Matthews, Robert E. Healy, and James D. Ross, Individually &c., et al., Nos. 6654, and 2559 Original, April Term, 1936, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 9th day of July A. D. 1936.

[SEAL]

MONCURE BURKE,
Clerk of the United States Court of Appeals for the District of Columbia.
By C. PRESTON GAINOR,
Assistant Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1936

297 Supreme Court of the United States

Order allowing certiorari

Filed October 12, 1936

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is advanced and assigned for argument at the head of the call on Monday, November 9, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1936

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 222

JAMES M. LANDIS ET AL., PETITIONERS

vs.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JULY 24, 1936
CERTIORARI GRANTED OCTOBER 12, 1936

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 222

JAMES M. LANDIS ET AL., PETITIONERS

vs.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX

	Original	Print
Proceedings in United States Court of Appeals for District of Columbia	1	1
Caption [omitted in printing]	1	1
Record from Supreme Court of District of Columbia	1	1
Caption [omitted in printing]	1	1
Bill of complaint	2	1
Motion to stay proceedings	31	24
Answer to motion for stay, etc	32	24
Opinion, Bailey, J., on motion for stay	40	30
Order staying further proceedings	45	34
Order allowing special appeal	45	34
Notice of motion	46	35
Motion to include affidavit and exhibits thereto in printed transcript of record	46	35
Affidavit of Homer Cummings	47	36
Exhibit A—Holding Company Act Rule 4	52	40
Exhibit B—Circular No. 2780	53	40
Exhibit C—Circular No. 2786	54	41
Exhibit D—Commission Release No. 22	57	43
Exhibit E—Letter to postmasters, Dec. 4, 1935	58	44
Exhibit F—Recital as to	59	45
Exhibit G—Amended bill of complaint in D. C. U. S.,		

	Original	Print
Record from Supreme Court of District of Columbia—Continued.		
Southern New York, No. E 81-378	59	45
Exhibit H—Schedule showing cases filed against members of Commission, etc	99	76
Exhibit I—Letter, Winthrop, Stimson, Putnam & Roberts to Attorney General, Nov. 29, 1935	103	79
Exhibit J—Answer, counterclaim, and cross-bill, etc., in D. C. U. S., Southern New York, No. E 81-378	104	80
Answer	105	80
First defense	107	81
Separate defense and counterclaim	126	96
Prayer for relief	172	131
Exhibit I—American Power & Light Co. subsidiaries	174	133
Exhibit II—Electric Power & Light Corp. subsidiaries	189	145
Exhibit III—United Gas Corp. subsidiaries	199	152
Exhibit IV—National Power & Light Co. subsidiaries	203	155
Exhibit V—American Gas and Electric Co. subsidiaries	213	162
Exhibit VI—Capitalization	223	171
Order bringing in Attorney General et al. as cross defendants and allowing intervention of subsidiary company defendants	226	173
Stipulation as to additional parties	227	173
Bill of intervention of Central Arizona Light & Power Company, et al. "subsidiary company defendants"	229	175
Answer to motion for inclusion of affidavit and exhibits thereto in printed transcript of record	236	181
Stipulation re amendment of answer	241	184
Order including motion, affidavit, and exhibits as part of transcript of record	243	186
Assignments of error	243	186
Designation of record	244	186
Clerk's certificate [omitted in printing]	245	187
Stipulation as to transcript of record	246	188
Petition for allowance of special appeal	249	189
Objections to allowance of special appeal	269	198
Minute entry of hearing	285	210
Opinion, Van Orsdel, J	286	211
Separate opinion, Groner, J	289	214
Dissenting opinion, Stephens, J	291	216
Judgment	298	224
Designation of record	299	225
Clerk's certificate	300	225
Order allowing certiorari	301	227

1 [Caption omitted.]

2 In Supreme Court of District of Columbia

In Equity. No. 60,146

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, STREET POST OFFICE ADDRESS, 50 BROAD STREET, NEW YORK, NEW YORK, PLAINTIFF

vs.

JAMES M. LANDIS, GEORGE C. MATHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION OF THE UNITED STATES; HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES; AND JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, DEFENDANTS

Bill of complaint

Filed November 27, 1935

To the Honorable the Justices of the Supreme Court of the District of Columbia:

The plaintiff, American Water Works and Electric Company, Incorporated, brings this, its bill in equity, against the defendants above named and respectfully shows:

I

The Plaintiff

1. The plaintiff is a corporation duly organized and existing under the laws of the State of Delaware and is a citizen of the State of Delaware.

II

The Defendants

2. The Securities and Exchange Commission is a commission established by an act of Congress, approved June 6, 1934, known as the "Securities Exchange Act of 1934", and is charged with the duty of administering and enforcing Title I of the Act of
3 Congress approved August 26, 1935, entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes" (said Title I of said Act being hereinafter referred to as "the Act"); the defendants, James M. Landis, George C. Mathews, Robert E. Healy, and James D. Ross, are members of and constitute said Securities and Exchange Commission (hereinafter called "the Commission"), the defendant James M.

Landis being Chairman thereof; the defendant Homer S. Cummings is the duly qualified and acting Attorney-General of the United States, and as such is charged by law with the duty of enforcing the laws of the United States, including the Act; the defendant James A. Farley is the duly qualified and acting Postmaster General of the United States, and has as such supervision of the administration of the Postal Department of the United States. Each of the individual defendants is a citizen of the United States, and each has his official residence and is to be found in the District of Columbia.

III

The Nature of the Suit

3. This is a suit of a civil nature wherein the matter in controversy exceeds the sum or value of Three thousand dollars ($3,000), exclusive of interest and costs. The suit is one arising under the Constitution and laws of the United States, in that the plaintiff seeks relief from, and to enjoin the defendants and each of them from enforcing, the Act, or any provision or part thereof, against the plaintiff on the ground that said Act, for the reasons hereinafter in Section X of this bill alleged, is, as against the plaintiff, in violation of the Constitution of the United States and null and void.

IV

The Plaintiff is a Holding Company[1]

4. The plaintiff is informed by counsel, and on such information believes and alleges, that it is a holding company. The plaintiff is also informed by counsel, and on such information believes and
4 alleges, that no application by it under Section 2 (a) (7) of the Act for a declaration that it is not a holding company could truthfully negative the facts required by subsection (i) thereof to be negatived as one of the conditions of such declaration, in that the plaintiff by virtue of stock ownership controls certain public-utility companies and certain holding companies as hereinafter in paragraphs 9 and 10 alleged. The plaintiff is likewise informed by counsel, and on such information believes and alleges, that it could not in good faith file an application for such declaration and that the Commission could not, under the terms of said Section 2 (a) (7), lawfully declare the plaintiff not to be a holding company under subsection (A) of said Section 2 (a) (7), even if the Commission should find the facts with respect to the plaintiff specified in subsection (iii) of said Section 2 (a) (7). The plaintiff is also informed by counsel, and on such information believes and alleges, that the

[1] Whenever any of the words or phrases defined in Section 2 of the Act are hereinafter used they are to be given the meaning given to them by said section, unless the context requires a different meaning.

Commission could not lawfully, under the terms of Section 3 (a) of the Act, or any other sections thereof, exempt the plaintiff as a holding company from any provision of the Act, even if the Commission found that such exemption would not be detrimental to the public interest or the interest of investors or consumers.

V

The Plaintiff is Required to Register under the Act

5. The plaintiff has outstanding securities which by use of the mails or other means or instrumentality of interstate commerce were distributed or made the subject of a public offering subsequent to January 1, 1925. Certain of such securities were owned or held on October 1, 1935, by persons not resident in the State of Delaware, the State in which the plaintiff is organized, and the plaintiff therefore is required, by the terms of Section 4 (b) of the Act, to register on or before December 1, 1935 with the Commission, by filing with the Commission the notification of registration provided for by Section 5 of the Act.

VI

The Plaintiff's Incorporation, Outstanding Securities, and Offices

6. The plaintiff was incorporated under the laws of the State of Delaware in June 1927 as the successor in title to the business and property of a corporation of the same name which had been incorporated under the laws of the State of Virginia in April 1914. The plaintiff has outstanding in the hands of the public, the following securities which were issued by it or its predecessor prior to August 26, 1935:

$14,984,000 principal amount of Ten-Year 5% Convertible Collateral Trust Bonds, due March 1, 1944.
$8,000,000 principal amount of Six Per Cent. Gold Debentures, Series A, due November 1, 1975.
$3,000,000 principal amount of Five Per Cent. Gold Debentures, Series B, due December 1, 1975.
200,000 shares of $6 Series, First Preferred Stock without par value.
1,750,888 shares of Common Stock without par value.

7. The plaintiff has more than 12,500 preferred and common stockholders. As of November 22, 1935, over 10,250 of said stockholders each owned less than 100 shares of preferred and common stock of the plaintiff.

8. The principal office of the plaintiff within the State of Delaware is located at no. 100 West 10th Street, Wilmington, Delaware. The plaintiff is authorized to do business in the State of New York, and its principal executive office is at 50 Broad Street in the city of New York.

VII

The Plaintiff's Business

9. The business of the plaintiff consists, and has consisted since its incorporation in 1927, in acquiring, owning, and holding stocks and other securities of other corporations, primarily for long term investment. The amount at which said investments is carried on the books of the plaintiff is in excess of $105,500,000 of which over 70% is represented by voting stocks of other corporations. Approximately 40% of said amount is represented by all or substantially all of the outstanding voting securities and certain other securities of thirty-eight public service corporations which are engaged exclusively in the collection, distribution, and sale of water to the public, and approximately 55% of said amount is represented by over 95%
6 of the outstanding voting securities and certain other securities of the West Penn Electric Company, a Maryland corporation, the great majority of said investments being represented by voting stock.

10. The business of said the West Penn Electric Company also consists and has consisted since its incorporation in 1925, in acquiring, owning, and holding stocks and other securities of other corporations, primarily for long term investment. The great majority of the securities owned by said company, said securities comprising approximately 94% of its assets, are the common stocks of other corporations, and the great majority of said common stock is the stock of two corporations, both of which are both electric utility companies and holding companies, and the principal subsidiary companies of said two corporations are electric utility companies. One of said two corporations is also to a small extent a gas utility company, and a few of the plaintiff's other subsidiary companies are gas utility companies.

11. In practically all cases the common stock of the electric utility companies in the plaintiff's holding-company system is at present the only voting stock of said corporations, and in most cases 100% or nearly 100% of said common stock is owned by the holding company in the system of which the particular electric utility company is the immediate subsidiary company.

12. As incident to the plaintiff's business as hereinabove alleged, and for the purpose of protecting, conserving, and enhancing its aforesaid investments in the securities of its subsidiary companies, the plaintiff consults with, advises, and assists the subsidiary companies in its holding company system which are operating companies, including those which are electric utility companies and gas utility companies, in their operating, engineering, financial, corporate, and managerial problems, and particularly for the purpose of enabling them to render service to the public in the most efficient manner and at the lowest possible cost, in accordance with the highest present-day

engineering and other standards. In the case of the subsidiary companies, in the plaintiff's holding-company system which are electric utility companies; all of which operate at present in adjoining States of the Union and within a geographical area roughly comprising parts of western Pennsylvania adjacent to but not including the City
of Pittsburgh, northern West Virginia, central and western
7 Maryland, northern Virginia, eastern Ohio, and south central Pennsylvania, the aforesaid services of the plaintiff are especially directed to enable said electric utility companies to secure the greatest economies in operation made possible by the physical connection and other operating unification and coordination of their generating, transmission, and distributing plants, equipment, and other facilities. For the above purpose, the plaintiff has assembled over a period of years and maintains an organization consisting of men of special training, experience, and ability in corporate, financial, managerial, and engineering matters, who, together with its executive officers, render said services to said subsidiary companies under arrangements which enable said subsidiary companies to avail themselves thereof at not more than the estimated cost thereof to the plaintiff, and in all cases at less than it would cost them separately to employ other experts of equal experience and ability. The executive officers of the plaintiff constantly consult with, advise, and assist the subsidiary companies in the plaintiff's holding-company system, including those which are electric utility companies, with respect to the problems of the subsidiary companies in their more general aspects and also with respect to their general policies. An important part of the services which said officers and the staff of the plaintiff furnish to the plaintiff's subsidiary companies, consists of financial services, including the investigation of markets for public utility securities, advice concerning the desirability and manner of obtaining additional capital, the financing of security issues, and the possible savings obtainable therefrom, the preparation of plans for such financing, and assistance in negotiating with bankers or underwriters for the sale of such issues, in the preparation of registration statements, prospectuses, and exhibits in connection with registration under the Federal Securities Act of 1933, supervision of the issuance of stocks, bonds, notes, and other securities, assistance in the preparation of mortgages and indentures, and all other acts necessary to the completion of the issuance and sale of securities. The staff of the plaintiff furnishes to said subsidiary companies which are electric utility companies studies of power needs and of the sources of power available through possible interconnections or through the development of generating facilities, and information concerning advancement made in the technical and engineering arts, reviews their
8 operating records with a view of suggesting improved methods of operation and the maintenance of operating standards, advises and recommends concerning the better utilization of generating equipment, and assembles data concerning new and improved

methods of application of electricity to all forms of service, and makes recommendations for the purpose of indicating opportunities for sales development.

13. Such services are rendered by the plaintiff to said subsidiary companies without profit directly or indirectly to the plaintiff, except such as it derives therefrom from the strengthening of the corporate and financial structure of said subsidiary companies.

14. In making the investments hereinabove alleged, the plaintiff has followed a policy of acquiring an investment in its subsidiary companies so substantial that the plaintiff is in a position through the exercise of its voting rights to satisfy itself that each company in which such investment has been made will always have a Board of Directors able to provide an efficient management and one best calculated to develop the corporate enterprise and thus to conserve and enhance the value of the plaintiff's investment therein. Each of the corporations in the plaintiff's holding-company system functions under the control of its own Board of Directors in accordance with the laws of the State under which it is incorporated.

15. The plaintiff is not now and never has been engaged in the business of sending or transporting or causing to be sent or transported goods or commodities in commerce with foreign nations or among the several States or with the Indian tribes, and such use as the plaintiff makes of the mails or any means or instrumentalities of interstate commerce is merely incidental to the business of the plaintiff hereinabove alleged.

VIII

Non-registered Companies: the Provisions of the Act

16. If the plaintiff fails to register with the Commisssion on or before December 1, 1935, as required by Section 4 (b) of the Act, such failure to register will subject it to the penalty provided by Section 29 of the Act as follows:

"SEC. 29. Any person who wilfully violates any provision of this title * * * shall upon conviction be fined not more than
9 $10,000 * * * except that in the case of a violation of a provision of subsection * * * (b) of section 4 by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding $200,000; * * *"

17. Such failure to register will also, under the provisions of Section 18 of the Act, subject the plaintiff to suits to compel the plaintiff to register under the Act.

18. In addition, under Section 4 (a) of the Act, it would be unlawful, after December 1, 1935, and while the plaintiff still remains unregistered as aforesaid, for the plaintiff—

"(1) to sell, transport, transmit, or distribute, or own or operate any utility assets for the transportation, transmission, or distribution

of natural or manufactured gas or electric energy in interstate commerce;

"(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

"(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

"(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

"(5) to engage in any business in interstate commerce; or

"(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5)."

19. The penalty for doing each of the acts specified in said Section 4 (a) is the same as the penalty alleged above for failing to register under the Act.

IX

Registered Companies: Same of the Proviisons of the Act

(A)

Issue and Sale of Securities (Sections 6 and 7)

20. If the plaintiff registers under the Act, it thereupon, among other things, becomes immediately unlawful for the plaintiff or any of its subsidiary companies under the provisions of Sections 6 and 7 of the Act (with the exception of certain narrowly restricted classes of securities, and with the power given to the Commission to exempt subsidiary companies of the plaintiff with respect to the issue or sale of certain of their securities issued for limited purposes and under certain defined circumstances), to issue or sell any of their own securities, or to exercise any privilege or right to alter the priorities, preferences, voting power or other rights of the holders of any of their own outstanding securities, without the consent of the Commission.

(B)

Acquisition of Property (Sections 9 and 10)

21. If the plaintiff registers under the Act, it thereupon, among other things, becomes immediately unlawful for the plaintiff, or for any of its subsidiary companies, under the provisions of Sections 9 and 10 of the Act (with, as concerns the business of the plaintiff, certain relatively unimportant exceptions), to acquire any securities or utility assets or any other interest in any business, without the consent of the Commission.

(C)

Loans, Dividends, Proxies, and Other Matters (Section 12)

22. If the plaintiff registers under the Act, it thereupon becomes immediately unlawful, under the provisions of Section 12 of the Act, for it and also (except as to the matters hereinafter in subdivision (c) of this paragraph alleged) for any of its subsidiary companies, to do, among other things, any of the following acts,
11 in contravention of rules, regulations, or orders which the Commission may prescribe with respect thereto:

(a) SECTION 12 (b): To lend or in any manner extend its credit to or to indemnify any other company in the plaintiff's holding-company system.

(b) SECTION 12 (c): To declare or pay any dividend on any of its securities or to acquire, retire, or redeem any of its securities.

(c) SECTION 12 (d): To sell any security which it owns of any public utility company.

(d) SECTION 12 (e): To solicit or to permit the use of its name to solicit any proxy, power of attorney, consent, or authorization regarding any of its securities.

(e) SECTION 12 (f): To negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under the Act, with any company, or with any affiliate of any company in the plaintiff's holding-company system.

23. Also, under the provisions of Section 12 (i) of the Act, if the plaintiff registers under the Act neither it nor any of its subsidiary companies can be represented before the Congress or any Member or committee thereof or before the Commission or before the Federal Power Commission with respect to any matter affecting the plaintiff or any of its subsidiary companies, unless the representative files with the Commission a statement of the subject matter for which he is to appear, the character and nature of his employment or retainer, and the amount of his compensation.

(D)

Service, Sales, and Construction Contracts (Section 13)

24. SECTION 13 (a): If the plaintiff registers under the Act, it will become unlawful for it, under Section 13 (a) of the Act, after

April 1, 1936, to, among other things, enter into or to take any steps in the performance of any service contract by which it undertakes to perform services for any of its associate companies which is a public utility company, except only such "transactions, involving special or unusual circumstances or not in the ordinary course of business", as the Commission may exempt as "necessary or appropriate in the public interest or for the protection of investors or consumers."

25. SECTION 13 (b): If the plaintiff registers under the Act, it will become unlawful for any of its subsidiary companies after April 1, 1936, under the provisions of Section 13 (b) of the Act to enter into or take any step in the performance of any service, sales, or construction contract by which such subsidiary company undertakes to perform services or construction work for, or to sell goods to, any associate company of such subsidiary company, except in accordance with the rules and regulations of the Commission in the premises. This prohibition is subject to the right of the Commission to exempt from the provisions of said Section transactions of certain classes specified in said Section 13 (b). Many of the subsidiary companies of the plaintiff habitually, and as part of their regular and necessary business, engage in transactions of the sort prohibited as aforesaid by said Section 13 (b) and which would not be entitled to the aforesaid exemption. The manner in which the plaintiff will be damaged by said Section 13 (b) if the plaintiff registers under the Act is hereinafter in paragraph 53 alleged.

(E)

The "or Otherwise" Prohibitions of the Act

26. In every case where any of the prohibitions of the Act hereinabove in paragraphs 20 to 25, inclusive, referred to take the form of prohibiting an act "by use of the mails or any means or instrumentality of interstate commerce, or otherwise", a prohibition of such act merely "by use of the mails or any means or instrumentality of interstate commerce" would have the effects hereinafter alleged in paragraph 38 as the effects of such last mentioned prohibition.

(F)

Divestments of Property and Simplification of System (Section 11)

27. SECTION 11 (b) (1): If the plaintiff registers under the Act, it will, "as soon as practicable after January 1, 1938", be ordered, under the provisions of Section 11 (b) (1) thereof, to limit the operations of its holding-company system "to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system." Said

provision of the Act applies also to each of the plaintiff's subsidiary companies. Said provision is limited only by (1) a proviso that a registered holding company may "continue to control one or more additional integrated public-utility systems" if the Commission finds that—

(a) Each of such additional systems cannot be operated independently without the loss of substantial economies obtainable by retention of control by such holding company of such systems.

(b) All such additional systems are located in one State or in adjoining States or in a contiguous foreign country; and

(c) The continued combination of such systems under the control of such holding company is not so large as to impair the advantages of localized management, efficient operation, or effective regulation, and (2) by a provision that the Commission "may permit as reasonably incidental or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

28. SECTION 11 (b) (2): If the plaintiff registers under the Act, and if the Commission finds that its corporate structure or continued existence, or the corporate structure or continued existence of any other company in its holding-company system, unduly or unnecessarily complicates the structure, or unfairly or inequitably distributes voting power among security holders, of its holding-company system, the plaintiff and/or any of its subsidiary companies will, "as soon as practicable after January 1, 1938", be ordered under the provisions of Section 11 (b) (2) of the Act to take such steps as the Commission shall find necessary to ensure against said results. Said provision of Section 11 (b) (2) is subject only to an exception (not applying
14 to the plaintiff, but only to certain of its subsidiary companies) to the effect that the Commission shall not require any change in the corporate structure or existence of any company which is not a holding company, or whose principal business is that of a public utility company, except for the purpose of fairly and equitably distributing voting power among the security holders of such company.

29. The plaintiff has subsidiary companies each of which in turn has one or more subsidiary companies which are holding companies. Because of this fact, the plaintiff, if it registers under the Act, will also, "as soon as practicable after January 1, 1938", be ordered, under the provisions of said Section 11 (b) (2) to cease to be a holding company with respect to each of its said subsidiary companies. As hereinabove alleged, approximately 55% of the plaintiff's investment in the securities of its immediate subsidiary companies is represented by the securities of one of said immediate subsidiary companies which in turn has one or more subsidiary companies which are holding companies.

(G)

Accounts, Reports, etc. (Other Sections of the Act)

30. If the plaintiff registers under the Act, it, and in most cases each of its subsidiary companies also, will or may be required to file with the Commission reports and other papers of the most comprehensive and detailed character with respect to practically every phase and aspect of their business. Section 15 (e) of the Act also expressly makes it unlawful for any of them to keep their "accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records" otherwise than in the form and manner prescribed by the Commission, after the Commission has prescribed such form and manner. In addition, they will be subject to visitatorial powers of the Commission of the most drastic, comprehensive, and detailed nature.

31. In support of the above allegations, the plaintiff begs leave to refer to the following other provisions of the Act:

(a) SECTION 5 (b): The provisions of this Section under which the plaintiff will be required to file a "registration statement", the matters which must be included therein being specified in said Section 5 (b).

(b) SECTION 7 (a) (1) and (2): The provisions of this Section with respect to the information and documents which must be included in the so-called "declaration" which the plaintiff and its subsidiary companies must file with the Commission in order to obtain the permission of the Commission to issue or sell their securities.

(c) SECTION 10 (a) (1), (2), and (3): The provisions of this Section with respect to the matters which must be included in any application to the Commission by the plaintiff or any of its subsidiary companies to acquire any securities or utility assets or any other interest in any business.

(d) SECTION 11 (a): The provisions of this Section with respect to the matters which it is declared to be the duty of the Commission to examine into in connection with the other provisions, hereinabove in paragraphs 27, 28, and 29 referred to, of said Section 11.

(e) SECTION 14: The provisions of this Section with respect to the annual, quarterly, and other periodic and special reports, and with respect to the answers to specific questions, and with respect to the minutes of directors', stockholders', and other meetings, which the Commission may require the plaintiff to file or make, and with respect to the Commission's power to require all such reports to be certified by independent public accountants.

(f) SECTION 15 (a): The provisions of this Section with respect to the Commission's power to require the plaintiff and each of its subsidiary companies to make, keep, and preserve any accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records which the Commission "deems necessary or appro-

priate in the public interest or for the protection of investors or consumers."

(g) SECTION 15 (a): The provisions of this Section in connection with Section 15 (e) hereinabove in paragraph 30 referred to.

(h) SECTION 15 (f): The provisions of this Section with respect to the visitatorial powers of the Commission in connection with "accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records."

(i) SECTION 15 (i): The provisions of this Section with respect to the powers of the Commission to require uniform methods for
16 keeping accounts, and with respect to the manner in which the cost of all assets shall be shown, the methods of classifying and segregating accounts, and the manner in which cost-accounting procedures shall be maintained.

(j) SECTION 18 (b): The provisions of this Section giving the Commission the power on its own motion to "investigate, or obtain any information regarding the business, financial condition, or practices of any registered holding company or subsidiary company thereof or facts, conditions, practices, or matters affecting the relations between any such company and any other company or companies in the same holding-company system."

(k) SECTION 20 (a): The provisions of this Section with respect to the items or details to be shown in any report or other document filed with the Commission under the Act and with respect to the methods to be followed in the keeping of accounts and in other matters.

(l) SECTION 20 (b): The provisions of this Section with respect to the powers of the Commission in imposing requirements regarding reports or accounts additional to those prescribed by any law of the United States or of any State.

X

The Reasons Why the Act is Unconstitutional as a Whole

32. The plaintiff is advised by counsel, and on such advice believes and alleges, that the Act is invalid, void, and of no effect, in that the Act violates and contravenes the provisions of the Constitution of the United States and the Amendments thereto, among other respects, as follows:

(a) The Act is not a valid exercise of the power of Congress to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; is not a valid exercise of the power of Congress to establish Post Offices and Post Roads; is not a valid exercise of any power conferred by the Constitution upon Congress; and is therefore in violation of Article I, Section 8 of the Constitution.

(b) The Act attempts unlawfully to delegate legislative power to the Commission in violation of Article I, Section 1 of the Constitution.

(c) The Act attempts to deprive the plaintiff, its bondholders, debentureholders, and stockholders of their property
17 without due process of law in violation of the Fifth Amendment to the Constitution.

(d) The Act attempts to impose excessive fines and cruel and unusual punishments upon the plaintiff, in violation of the Eighth Amendment to the Constitution.

(e) The Act attempts unlawfully to impose a Federal system of regulation upon the plaintiff and thereby attempts to invade and usurp powers reserved to the States, all in violation of the Tenth Amendment to the Constitution.

(f) The Act attempts to subject the plaintiff to unreasonable searches and seizures in violation of the Fourth Amendment to the Constitution.

33. The plaintiff is further advised by counsel, and on such advice believes and alleges that the Act is inseparable in its provisions and that in consequence the Act is in its entirety unconstitutional, invalid, null, and void.

XI

The Consequences to the Plaintiff and Its Subsidiaries of Not Registering

34. If the plaintiff fails to register under the Act on or before December 1, 1935, and whether it thereafter (and while still unregistered) does or does not comply with the provisions of Section 4 (a) of the Act with respect to unregistered holding companies, it will suffer great, immediate, and irreparable damages unless it is able to obtain the relief sought by this bill. Among the damages which it will so suffer are the damages hereinbelow in paragraphs 35 to 44, inclusive, specified.

35. SECTION 4 (a) (2): The plaintiff is informed by its counsel, and on such information believes and alleges, that the performance by it after December 1, 1935, of some of the services, hereinabove alleged in paragraph 12, for the public utility companies in its holding company system for a charge will constitute, or will be asserted to constitute, the taking of steps in the performance of service contracts with said subsidiary companies. The abandonment by the plaintiff of said services under said arrangements will cause it
18 and its subsidiary companies severe and irreparable loss, for the reason that it would then no longer be possible for the plaintiff profitably to avail itself of the services of its staff of experts hereinabove in paragraph 12 referred to, so that the plaintiff would either have to continue them on its payrolls at great loss to itself, or would have to discharge them, in which latter event it would be extremely difficult, if not impossible, to replace them later, if the Act is held unconstitutional, and for the reason also that, as hereinabove alleged, the plaintiff's subsidiary companies could not obtain services of the same quality as the services now rendered them by said experts

except at an aggregate cost to them much greater than the present cost to them.

36. SECTION 4 (a) (4): For the proper conduct and development of the business of, and for the proper protection and conservation of the assets of, the plaintiff and the subsidiary companies in its holding-company system, it is essential that the plaintiff be at all times in a position where it is free, subject to the laws under which it operates at present, to negotiate for the acquisition of and to acquire the securities of companies of the sort described in Section 4 (a) (4) of the Act; and it is at all times possible that some urgent occasion for such negotiation and/or acquisition may arise, demanding prompt action; and without the ability to take such prompt action in the premises by reason of the provisions of the Act the plaintiff will suffer severe and irreparable loss.

37. SECTION 4 (a) (3): For the proper conduct and development of the business of, and for the proper protection and conservation of the assets of, the plaintiff and the subsidiary companies in its holding-company system, it is essential that the plaintiff be at all times in a position where it is free, subject to the laws under which it operates at present, to distribute, and to make public offerings for the sale or exchange of, the securities of companies of the sort described in Section 4 (a) (3) of the Act; and it is at all times possible that some urgent occasion for such acts by it may arise, demanding prompt action; and without the ability to take such prompt action in the premises by reason of the provisions of the Act the plaintiff will suffer severe and irreparable loss.

38. The doing by the plaintiff of any of the acts referred to in the three preceding paragraphs, the doing of which by it by the
19 use of the mails or any means or instrumentality of interstate commerce is prohibited by Sections 4 (a) (2), (3), and (4) of the Act, would either be wholly impossible without the use by the plaintiff of the mails and/or of some means or instrumentality of interstate commerce, or would be impossible without such use except by the employment of unbusinesslike, cumbersome, burdensome, and wasteful methods and devices entailing great additional expenses and delays, causing severe and irreparable loss to the plaintiff. The plaintiff moreover is informed by its counsel, and on such information believes and alleges, that in many or most cases legal doubts and uncertainties will arise as to whether the methods and devices employed by the plaintiff to avoid such use of the mails and of the means and instrumentalities of interstate commerce had legally avoided them, and that these doubts and uncertainties would probably result in the refusal of other persons to make necessary contracts and to have other necessary dealings with the plaintiff or to perform contracts made with the plaintiff, and would probably also result in prosecutions under the Act for alleged violations of Section 4 (a) of the Act, and in other vexatious and expensive litigation based on the said legal doubts and uncertainties, all to the great and irreparable damage of the plaintiff.

39. A number of the subsidiary companies in the plaintiff's holding-company system, the securities of which the plaintiff owns, controls, or holds with power to vote habitually and as a regular and necessary part of their business do one or more of the acts enumerated in Sections 4 (a) (1), (2), (3), (4), and (5) of the Act and to cease to do so would cause them great and irreparable loss. If the plaintiff fails to register under the Act it will also be unlawful for it after December 1, 1935, under the terms of Section 4(a)(6) of the Act to own, control, or hold with power to vote any securities of any of the said companies which do any of such enumerated acts, even though the doing of such acts by such subsidiary companies be necessary or vital to the proper prosecution of their business and the rendition of adequate service to the public.

40. Compliance by the plaintiff with this prohibition of Section 4(a) (6) of the Act would in and of itself cause the plaintiff, both directly and indirectly through its effect on its subsidiary companies and on the credit and financial strength of the plaintiff, severe and immediate and irreparable damages, and in an amount which might well be disastrous. As alleged above, all or substantially all of the voting securities of each of the plaintiff's immediate subsidiary companies are owned by the plaintiff. It is obvious that the plaintiff could not divest itself immediately, or even over a long period, of the securities which it is so prohibited from holding after December 1, 1935, except at a ruinous sacrifice; and the plaintiff could not properly or lawfully exercise its stock ownership in its said subsidiary companies by causing them to cease to do the aforesaid acts the doing of which by them after December 1, 1935, will make it unlawful for the plaintiff, under the provisions of Section 4 (a) of the Act, to continue to own their stock, since, as above alleged, this would cause them (and therefore the plaintiff also) irreparable damages, and would also interfere with the rendition by certain of said subsidiaries which are public service corporations of their duties to the public.

41. On the other hand, it is essential for the proper conduct of the plaintiff's business that the plaintiff be able to exercise such control over its subsidiary companies as its ownership of the stock of its immediate subsidiary companies lawfully gives it, and without the unquestioned right to exercise such control the plaintiff will suffer great and irreparable damages. The doubt cast upon the right of the plaintiff to vote the stock of corporations which the Act declares that the plaintiff may not lawfully own, control, or hold with power to vote will, among other things, completely paralyze corporate action by many of such corporations in practically all matters where action by their stockholders is necessary; and even though the Act be eventually held unconstitutional and void, the cloud cast upon the validity of any such corporate action, should the plaintiff after December 1, 1935, vote such stock despite the provisions of said Sections 4 (a) (6), would be such as effectually to prevent

other persons from contracting or otherwise dealing with said corporations in any matters in which the validity of such contracts or other actions depended on the right of the plaintiff to vote said stocks.

42. The same cloud would also be cast upon the validity of any other acts specified in Section 4 (a) of the Act and done by the plaintiff (if it is unregistered under the Act) after December 1, 1935, and would also effectually prevent other persons from
21 contracting or otherwise dealing with the plaintiff in any matters connected with such acts by the plaintiff. The plaintiff refers in this connection to Section 26 (b) of the Act; and the plaintiff is advised by counsel, and on such advice believes and alleges, that the provisions of said Section 26 (b) apply as well to violations of Section 4 (a) of the Act as to violations of other sections. For this reason the plaintiff (so long as it is unregistered under the Act) will suffer all or most of the damages hereinabove alleged whether, having failed to register under the Act it complies or does not comply with the provisions of Section 4 (a) of the Act.

43. The plaintiff is advised by its counsel, and on such advice believes and alleges, that if the plaintiff while unregistered under the Act, after December 1, 1935, does any of the acts specified in Section 4 (a) of the Act, each and every of such acts will probably be asserted by the defendants to constitute a separate violation by it of the Act for which a separate fine may be imposed on it under the provisions of Section 29 thereof, and with respect to each of which it may otherwise be proceeded against as elsewhere provided in the Act.

44. The plaintiff is informed and believes, and on such information and belief alleges the fact to be, that if (having failed to register under the Act) the plaintiff, instead of complying with the provisions of said Section 4 (a), thereafter, and after December 1, 1935, and while still unregistered, and as its only alternative to incurring some of the damages above alleged which will result from compliance with said provisions, does not comply therewith, it will be subject to and threatened with a great multiplicity of successive prosecutions under Section 29 of the Act and of other suits and proceedings for the purpose of enforcing said provisions against it, causing it immediate and irreparable damages; and the plaintiff is informed and believes, and on such information and belief alleges the fact to be, that the great number and variety of such possible prosecutions, suits, and other proceedings under Section 4 (a) of the Act, and the possibility that many such prosecutions, suits, and other proceedings may be brought against it based on alleged violations of the Act which are not in fact violations thereof, or to prevent violations which the plaintiff was not intending to commit, or for viola-
22 tions which the plaintiff had committed inadvertently or believing them in good faith not to be violations, will also cause it to be subject to and threatened with a great multiplicity of prose-

cutions, suits, and other proceedings, causing it immediate and irreparable damages, in addition to the damages to it from complying with the provisions of Section 4 (a) of the Act, even if it attempts after December 1, 1935 (and while still unregistered), to comply with said section.

45. The plaintiff is also advised by its counsel, and upon such advice believes and alleges, that it is impossible to state with certainty that any such prosecution or suit or proceeding against it with respect to any separate violation of any of said provisions of said Section 4 (a) will necessarily involve the constitutionality of the Act as a whole as against the plaintiff; and the plaintiff is also advised by its counsel, and on such advice believes and alleges, that the same is true as to any prosecution or other proceeding against it under the provisions of Section 4 (b) of the Act.

46. Because of the facts hereinabove in paragraphs 35 to 45, inclusive, alleged, and whether or not the plaintiff (having failed to register under the Act) does or does not, after December 1, 1935 (and while still unregistered), comply with the provisions of Section 4 (a) of the Act, it is essential for the plaintiff, in order to avoid great and immediate and irreparable damages, to obtain a prompt adjudication of the constitutionality, as against it, of the Act in its entirety; and the plaintiff is advised by its counsel, and on such advice believes and alleges, that the present suit affords it a proper and the only adequate method for obtaining such prompt determination, for the reason that in no other way can any of said damages certainly be avoided or all or most of them be avoided at all.

XII

The Plaintiff's Reason for Not Registering

47. Believing the Act as a whole to be unconstitutional, the plaintiff has decided not to register under it on or before December 1, 1935, for the reason, among others, that, although it is obviously impossible to make precise estimates in the premises, the plaintiff, as at present advised, believes that the damages which it will suffer as the consequence of registering will be as great as, if not
23 greater than, those which it will suffer as a consequence of not registering.

XIII

The Consequences to the Plaintiff and Its Subsidiaries of Registering

48. For the reason stated in the paragraph next preceding, the plaintiff is advised by counsel that it is appropriate and perhaps necessary for it also to allege in this bill the irreparable damage which it will suffer as a consequence of registering under the Act.

49. The plaintiff will suffer great and irreparable damages if it registers under the Act, and whether or not it thereafter complies or

attempts to comply with the provisions of the Act, unless it is able to obtain the relief sought by this suit.

50. The plaintiff is advised by its counsel, and on such advice believes and alleges, that if it registers under the Act it will be subject to and threatened with a great multiplicity of successive suits, proceedings, and prosecutions under, among others, the various provisions of the Act hereinabove referred to in paragraphs 20 to 31, inclusive, and that, because of the enormous complexity of the Act and of the doubts and uncertainties which are bound to arise with reference to the interpretation, operation, and effect of many of its provisions and of the orders, rules, and regulations issued under it by the Commission, it will, for the reasons hereinabove in paragraph 44 specified, be subject to such threat whether or not, having registered under the Act, it thereafter complies or fails to comply with the provisions of the Act, and that such threat will alone cause it great and immediate irreparable damages. The plaintiff is also advised by its counsel, and on such advice believes and alleges, that it is impossible to state with certainty either that any such suit, proceeding, or prosecution will be brought against it in the near future, or that when brought it will necessarily involve the constitutionality, as against it, of the Act as a whole.

51. Among the irreparable damages which will be caused to the plaintiff if it registers under the Act are the damages hereinafter in this paragraph alleged; and the plaintiff is advised by its counsel, and on such advice believes and alleges, that all of said damages can be avoided or greatly minimized if the plaintiff can obtain in
24 this suit a prompt adjudication that the Act, as against it, is unconstitutional as a whole, and that none of them can certainly be avoided in any other manner, and that most or all of them can probably not be avoided in any other manner:

(a) The costs to the plaintiff of defending actions, proceedings, and prosecutions against it under the aforesaid provisions of the Act.

(b) The costs to the plaintiff of preparing the registration statement, hereinabove in paragraph 31 (a) referred to, required by Section 5 of the Act.

(c) The costs to the plaintiff of preparing the other reports, etc., required by the other provisions of the Act, hereinabove in paragraphs 30 and 31 referred to, and of changing its bookkeeping methods, etc., to conform to the forms, etc., which the Commission may prescribe.

(d) The damages caused by the delays and the costs necessarily entailed by having to obtain the consent of the Commission (even when such consent might eventually be obtained) to the many acts, hereinabove in paragraphs 20 to 25, inclusive, referred to, necessary to be done in the plaintiff's business which the plaintiff as a registered company may not lawfully do without the consent of the Commission or in contravention of the orders, rules, or regulations of the Commission, and by the doubts and perplexities, prior to the grant-

ing or refusing of such consent, as to whether or not such consent can be obtained or as to the construction and effect of such orders, rules, and regulations.

(e) The damages caused by the prohibition of service contracts hereinabove in paragraph 24 referred to by Section 13 (a) of the Act. The damages caused by this prohibition, if the plaintiff registers under the Act, will be to all intents and purposes the same as the damages hereinabove in paragraph 35 alleged as among the consequences to it of not registering.

(f) The damages caused by the divided responsibility, the long delays in making business and financial decisions, and the impossibility of making or the difficulty and delay in making important contracts with other parties, due to their doubts as to the validity thereof if made without the consent of the Commission, their refusal to make them without such consent, or their refusal to wait until such consent can be obtained, all said damages being the result of the practically unlimited control given to the Commission under the provisions of the Act hereinabove in paragraphs 20 to 29, inclusive, alleged over virtually every phase and aspect of the plaintiff's business, and of the doubts and uncertainties which will necessarily arise as to what the plaintiff may or may not lawfully do prior to the issuance of the multifarious orders, rules, and regulations which the Act authorizes the Commission to promulgate, and, after promulgation thereof, as to their interpretation, operation, and effect.

(g) The damages caused by the provisions, hereinabove in paragraphs 27, 28, and 29 alleged, of Section 11 of the Act, the provisions of which Section may require the plaintiff to divest itself of a large part or even (as shown by the allegations of paragraph 29) of the major part of its investments during a period in which many other holding companies will, under the Act, be likewise required to take the same action, thus compelling the plaintiff to dispose of an enormous amount of its investments under circumstances constituting practically forced sales at which it will be impossible for it to realize anywhere near their actual values. Although the plaintiff will not be required so to divest itself of its assets for several years to come, nevertheless the possibility that it may have to do so is a potent, present threat of such severe and disastrous consequences that the plaintiff should not be required to live under it even if it is, as the plaintiff believes it to be because of the unconstitutionality of the Act, a threat which will never be fulfilled.

(h) The damages caused by the indefiniteness and uncertainty of the standards and tests set up by the Act for the Commission to apply in granting or refusing leave to the plaintiff to do the acts which under the Act may be done by registered holding companies only with the consent of the Commission or in accordance with the rules and regulations prescribed by the Commission. The indefiniteness and uncertainty of said standards and tests will in many cases make it impossible for the plaintiff's directors to do more than specu-

late as to whether or not the Commission will or will not permit, or as to the terms and conditions on which it will permit, the plaintiff to do many of such acts, and will therefore in many cases make them unwilling to incur the expense of initiating them and of thereafter obtaining the consent of the Commission to them. Among the
26 provisions of the Act which will cause such damages to the plaintiff are those referred to in the following paragraphs of this subparagraph (h).

Under Sections 6 and 7 of the Act, the plaintiff's directors will no longer be permitted to exercise their discretion as to the type of securities which should be issued by the plaintiff. Except as to certain short term securities which are exempted from the provisions of said Sections, these sections of the Act do not permit the Commission to grant its consent to the issue or sale of securities by the plaintiff unless the security to be issued or sold is

"(a) a common stock having a par value and being without preference as to dividends or distribution over, and having at least equal voting rights with, any outstanding security of the declarant; or

"(B) a bond (i) secured by a first lien on physical property of the declarant, or (ii) secured by an obligation of a subsidiary company of the declarant secured by a first lien on physical property of such subsidiary company, or (iii) secured by any other assets of the type and character which the Commission by rules and regulations or order may prescribe as appropriate in the public interest or for the protection of investors;".

The only exceptions to this limitation on the types of securities which the plaintiff would be permitted to issue under the Act, are when the security to be issued or sold is solely for the purpose of "refunding, extending, exchanging, or discharging" an outstanding security of the plaintiff "or for the purpose of effecting a merger, consolidation, or other reorganization"; or "for necessary and urgent corporate purposes" of the plaintiff where the limitations "would impose an unreasonable financial burden" upon the plaintiff "and are not necessary or appropriate in the public interest or for the protection of investors or consumers." Such vague and indefinite standards make it impossible for the plaintiff to do more than speculate as to the circumstances under which it might be permitted to issue securities other than par-value common stock or bonds, except in the case of meeting maturing issues or to affect a merger, consolidation, or other reorganization.

Moreover, the Commission cannot grant its consent to the plaintiff to issue such securities if it finds, among other things, that
27 "(1) the security is not reasonably adapted to the security structure of the declarant and other companies in the same holding company system; (2) the security is not reasonably adapted to the earning power of the declarant; (3) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of the business in which the applicant lawfully is engaged or has an interest; (4) the fees, commis-

sions, or other remunerations, to whomsoever paid, directly or indirectly, in connection with the issue, sale, or distribution of the security are not reasonable." The Act provides no standards or tests by which the Commission or the plaintiff may determine whether the security to be issued is or is not "reasonably adapted" to the plaintiff's earning power or to the plaintiff's security structure or the security structure of other companies in the plaintiff's holding-company system. No tests or standards are provided by the Act for the determination, among other things, of whether the financing is "necessary or appropriate" to the "economical and efficient operation" of the plaintiff's business. In the conduct of the plaintiff's business, financing must be foreseen and planned for considerably in advance of the actual issuance of the securities.

Moreover, under Section 10 (c) (1) and (2) of the Act the Commission is prohibited from approving the acquisition by the plaintiff (1) "of any securities * * * or any other interest which is * * * detrimental to the carrying out of the provisions of Section 11" of the Act, and also (2) of any securities of a public-utility company or a holding company unless such acquisition will tend toward "the economical and efficient development of an integrated public-utility system."

Even though a proposed acquisition will tend towards the efficient and economical development of an integrated public utility system, the Commission cannot approve the acquisition if it finds that (1) the acquisition "will tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers", or (2) the consideration to be paid for the securities or utility assets to be acquired is not reasonable "or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the
28 securities to be acquired", or (3) the acquisition will "unduly complicate the capital structure of the holding-company system * * * or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning" of the holding-company system. In these provisions also there are no standards or tests provided to determine whether a proposed acquisition complies with these vague and indefinite conditions. Acquisitions of property and securities require the preparation of plans and the working out of details long in advance of the actual acquisition. The difficulties and uncertainties inevitably resulting from these provisions would seriously disrupt the proper and lawful conduct of the plaintiff's business.

(i) The damages caused by the complete change in the general character and conduct of the plaintiff's business which the Act will compel. A business of the character and magnitude of the plaintiff's can, from day to day, be conducted only in accordance with basic policies which must look to the future. The policies which have guided the conduct and management of the plaintiff's business in

past years have all been conceived and carried out from the fundamental viewpoint of a permanently sound growth and expansion of its business. The policies which have been followed as regards the selections of investments, the character and type of securities to be issued by the plaintiff, the development of its personnel and organization, and as regards dividends and other corporate matters have always been established from this viewpoint. The provisions of the Act which are applicable to the plaintiff and, to a large extent, to the plaintiff's subsidiary companies, have obviously been drafted with a view to the substantial elimination of public-utility holding companies. While this substantial elimination is deferred until after January 1, 1938, the regulatory provisions of the Act applicable to the plaintiff immediately should it register with the Commission are designed to prepare the plaintiff, and other public-utility holding companies for such elimination. For this reason, among others, if the plaintiff registers with the Commission, the basic principles underlying the policies which have always guided the conduct of the plaintiff's business and upon which its success depends, must be immediately and radically revised in preparation for a future of drastic contraction and possible dissolution. Such a change
29 in policies will necessarily require immediate changes in the day-to-day conduct of the plaintiff's business, which could not be made without great immediate losses, to say nothing of the losses over a period of years.

52. The damages hereinabove in paragraphs 50 and 51 alleged which the plaintiff will suffer as the consequence of registering under the Act are in their nature incapable of exact determination, but the plaintiff verily believes and therefore alleges that they will be enormous.

XVI

Damages to the Plaintiff's Subsidiary Companies Causing Damages to the Plaintiff

53. As hereinabove in paragraph 9 alleged, the plaintiff has many subsidiary companies. Many of these companies are holding companies and/or public utility companies, and many are neither, although some of them are operating public service corporations. Although none of the provisions of the Act hereinabove in paragraphs 20 to 31, inclusive, alleged would apply to any of said subsidiary companies which are not themselves holding companies, but for the fact that they are subsidiary companies of a holding company, nevertheless most of said provisions will apply to all of the subsidiary companies of the plaintiff, except that, as to such of them as are not holding companies, they will apply unless and until the Commission by order after application under the provisions of Section 2(a) (8) of the Act may declare any of them not to be a subsidiary company, or unless and until, under the provisions of Section 3(d) of the Act the Commission may exempt any of them from any of the provisions

of the Act. As hereinabove in paragraph 9 alleged, approximately 55% of the plaintiff's investments is represented by the voting and other securities of a subsidiary company which is itself a holding company, and the great majority of the assets of said holding company consists of the securities of two corporations which are both holding companies and electric utility companies. If the plaintiff registers under the Act, many of the plaintiff's subsidiary companies, including those referred to in the preceding sentence, will sustain directly all or many of the damages hereinabove in paragraphs 30 49 to 52, inclusive, alleged, and said direct damages to said subsidiary companies will also in large part be damages sustained by the plaintiff, by reason of the plaintiff's large investments, direct or indirect, in said subsidiary companies hereinabove alleged, and particularly by reason of the fact that, as hereinabove in paragraph 9 alleged, the greater part of the plaintiff's investments consist of common stock.

Wherefore, reserving the right hereafter to apply for temporary injunctive relief, the plaintiff prays:

(1) That the defendants and each of them and their successors in office and all those acting or claiming to act under their authority or by their direction be permanently restrained and enjoined from attempting by any means whatsoever to compel compliance by the plaintiff with said Act or to enforce the provisions of said Act against the plaintiff, from issuing against the plaintiff or making applicable to the plaintiff any order, rule, or regulation under said Act, from instituting or causing to be instituted against the plaintiff or its directors, officers, agents, or employees any prosecution, action, or other proceeding for any alleged violation of said Act or of any order, rule, or regulation under it, and from requiring or attempting to require the plaintiff or any of its subsidiary companies to comply with any provision of said Act or of any order, rule, or regulation under it; and that said Act and each and every provision thereof be adjudged unconstitutional, void, and of no effect.

(2) That the plaintiff may have such other and further relief as may to the Court seem just and equitable.

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Of Counsel.

31 [*Duly sworn to by H. Hobart Porter; jurat omitted in printing.*]

The Clerk will please file and issue the writ of subpoena to all of the defendants.

JOHN S. FLANNERY,
Attorney for Plaintiff.

In Supreme Court of District of Columbia

Motion to stay proceedings

Filed December 7, 1935

(Equity No. 60146)

* * * * * * *

The defendants in the above-entitled causes respectfully represent to this Honorable Court as follows:

1. The bills of complaint herein seek to enjoin the enforcement of the Public Utility Holding Company Act of 1935 (Public, No. 333, 74th Congress, Title I), upon the ground that the said Act is unconstitutional.

2. There have been filed in at least ten district courts of the United States at least forty-eight bills of complaint on behalf of 147
32 plaintiffs, all of which similarly seek to enjoin the enforcement of the said Act, on the ground that it is unconstitutional.

3. The Government is anxious to secure an early determination of the constitutionality of said Act. To that end the Securities and Exchange Commission, pursuant to its duty under the Act, has already instituted a civil suit in the Southern District of New York against Electric Bond and Share Company and five of its principal subsidiary holding companies. This suit of the Securities and Exchange Commission against Electric Bond and Share Company et al. will be prosecuted with all due diligence to secure from the Supreme Court promptly an authoritative determination of the validity of the essential features of the Act. No public interest will be served by pressing for a decision of this issue in a multitude of suits. On the contrary, such a course of action will tend to clog the courts, overtax the facilities of the Government, and make against that orderly and economical disposition of the controversy that is the Government's aim.

Wherefore the defendants respectfully move this Honorable Court to stay all the proceedings herein relating to the validity of the Public Utility Holding Company Act of 1935 until the validity of said Act has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission v. Electric Bond and Share Company et al., now pending in the District

Court of the United States for the Southern District of New York, or until that case is otherwise terminated.

HOMER S. CUMMINGS.
Attorney General of the United States.
JOHN J. BURNS.
General Counsel,
Securities and Exchange Commission.
ROBERT E. KLINE, JR.,
Attorney for Defendants.

In Supreme Court of District of Columbia

Answer of plaintiff to defendants' motion for a stay, etc.

Filed December 12, 1935

* * * * * * *

33 Plaintiff, American Water Works and Electric Company, Incorporated, in response to the Motion filed herein and served upon its counsel of record December 7th, 1935, requesting a Stay of proceedings in the above entitled cause involving the validity of the Public Utility Holding Company Act of 1935 "until the validity of said Act has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission vs. Electric Bond and Share Company et al., now pending in the District Court of the United States for the Southern District of New York, or until that case is otherwise terminated", respectfully says:

First. That this Court has no discretionary power or jurisdiction to grant the stay requested for the reasons that, as hereinafter in Paragraphs Second and Third more fully set out, the issues of fact and law involved in the case at bar and those in said Electric Bond and Share Company case are so dissimilar and the operations of the two companies and their respective subsidiaries are so different that, as plaintiff has been informed by its counsel and believes and alleges, a decision in said Electric Bond and Share Company case will not settle the questions of fact and law raised by the bill of complaint filed in the case at bar or determine the rights of this plaintiff under the Constitution of the United States.

Second. It is apparent from a comparison of the Government's bill of complaint in the Electric Bond and Share Company case (a copy of which is attached hereto as Exhibit A) with the bill of complaint filed by the plaintiff herein that the issues in the two cases are entirely dissimilar.

The Government's bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of the entire Act, but only of two subsections of one section of the Act, neither of which relates to any of the regulatory or other drastic

provisions of said Act. The bill of complaint against the Electric Bond and Share companies requests only (1) that the defendants be compelled to register with the Commission under Section 4 (b) of the Act and (2) that they be enjoined from engaging in certain of the activities enumerated under Section 4 (a) of the Act. The activities so enumerated consist of selling, transmitting, or distrib-
34 uting, or owning or operating utility assets for the transmission or distribution of gas or electricity in interstate commerce and using the mails or instrumentalities of interstate commerce to negotiate or perform service, sales, or construction contracts or to engage in any business of interstate commerce or to own or control securities of a subsidiary company that does any of the foregoing, unless the company registers with the Commission.

Section 32 of the Act provides that—

"If any provision of this title or the application of such provision to any person or circumstances shall be held invalid, the remainder of the title and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby."

Plaintiff has been informed by its counsel and believes and alleges that the Government will contend that the issue of the constitutionality of Sections 4 (a) and (b), which is the sole constitutional issue involved in the Electric Bond and Share Company case, is a separable and distinct issue from the constitutionality of the remaining provisions of the Act, and that consequently a determination by any court of the constitutionality of Sections 4 (a) and (b) as applied to the Electric Bond and Share Company group cannot, under Section 32 of the Act, affect or determine in any manner the constitutionality of the other provisions of the Act as applied to the plaintiff company in the case at bar. Thus, the bill of complaint against the Electric Bond and Share companies does not raise for the determination of the Court the most vital and important issues which are raised by this plaintiff in the case at bar.

The Government's complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of Section 11 (b), the "death sentence" provisions of the Act, which give to the Commission an almost uncontrolled discretion to require plaintiff to dispose of its investments, direct or indirect, in the stocks and securities of public utility companies, holding companies, and in companies not engaged in business either as public utility com-
35 panies or holding companies, and under which the Commission is empowered and directed to paralyze and dismember plaintiff's business and to enforce its complete disintegration and destruction.

The bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of Sections 6 and 7 of the Act, which give to the Commission complete and unrestricted control over the issue and sale of securities of the plaintiff, which would seriously interfere with and hamper the board of

directors and officers of plaintiff in the proper conduct of plaintiff's business.

The bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of Sections 9 and 10 of the Act, giving to the Commission complete and unlimited control over future acquisitions of property by the plaintiff, or of the provisions which prohibit plaintiff from acquiring any property or securities which will not tend toward the development of an "integrated public utility system."

The bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of other sections of the Act which give the Commission complete and unlimited control over practically every phase of plaintiff's business, including the declaration of dividends, loans to subsidiaries and other internal corporate affairs.

The bill of complaint against the Electric Bond and Share companies does not raise the issue of the constitutionality of the numerous provisions of the Act giving the Commission practically unlimited powers to make investigations of the plaintiff's affairs and to require compliance with the most detailed accounting rules, submission of reports and other papers of the most comprehensive and detailed character with respect to practically every phase and aspect of plaintiff's business, including those which have not the remotest connection with or any effect on interstate commerce.

The constitutionality of these provisions of the Act is directly raised in the case at bar but is not raised at all in the Government's bill of complaint against the Electric Bond and Share companies, and these, among others, are the provisions of the Act which threaten

the imminent diruption and destruction of plaintiff's business
36 and which will result inevitably in irreparable loss and damage to plaintiff and its stockholders.

Third. The Government's bill of complaint against the Electric Bond and Share companies clearly recognizes that the controlling issue in that case is one to be determined on the basis of specific facts relating to the character of that particular Company's activities and the nature of its business. It contains very detailed and full statements of the activities and business of the Electric Bond and Share group of companies, particularly in an attempt to show that those defendants are engaged in interstate commerce. It alleges that the defendant Electric Bond and Share Company is the top holding company of the five additional defendants, American Gas and Electric Company, American Power and Light Company, Electric Power and Light Corporation, National Power and Light Company and United Gas Corporation, these five companies being intermediate holding companies, all controlled by Electric Bond and Share Company; that the American Gas and Electric Company system has many public utility subsidiary companies, operating in many states and owning and operating utility assets by which electric energy is transmitted in interstate commerce into or from Virginia,

West Virginia, Ohio, Kentucky, Tennessee, North Carolina, Michigan, Indiana, Pennsylvania, and other states; that the American Power and Light Company system has many public utility subsidiary companies, operating in many states and owning and operating utility assets by which electric energy is transmitted in interstate commerce into or from Oregon, Washington, Idaho, Montana, Nebraska, Iowa, and other states, and by which gas is transmitted in interstate commerce into or from Oregon, Washington, Minnesota, Wisconsin, New Mexico, Arizona, and other states; that the Electric Power and Light Company system has many public utility subsidiary companies, operating in many states and owning and operating utility assets by which electric energy is transmitted in interstate commerce into or from Louisiana, Mississippi, Arkansas, Tennessee, Idaho, Oregon, Nevada, Utah, and other states; that the United Gas Company system has several public utility subsidiary companies, operating in many states and owning and operating utility assets by which gas is transmitted in interstate commerce into or
37 from Florida, Alabama, Mississippi, Louisiana, Texas, Republic of Mexico, and other states; that the National Power and Light Company system has many public utility subsidiary companies, operating in many states and owning and operating utility assets by which electric energy is transmitted in interstate commerce into or from Pennsylvania, North and South Carolina, Tennessee, Alabama, Texas, New Jersey, New York, Virginia, and other states.

The Government's bill of complaint in that case further alleges that the Electric Bond and Share Company and American Gas and Electric Company so dominate and control all of their subsidiary companies engaged in such interstate transmission of electricity and gas that those companies are themselves, in their own corporate capacity, engaged in the transmission in interstate commerce of electric energy and manufactured and natural gas.

The bill of plaintiff, on the other hand, shows that but little more than half of the capital assets of plaintiff consist directly or indirectly of investments in "public utility companies", as that term is defined in the Act—approximately 40% of the total capital assets of plaintiff being represented by direct ownership by plaintiff of all or substantially all of the outstanding voting securities and certain other securities of thirty-eight water works companies, which are not "public utility companies" as that term is defined in the Act, and approximately 55% of the capital assets of plaintiff being represented by direct ownership by plaintiff of over 95% of the outstanding voting securities and certain other securities of a single holding company, The West Penn Electric Company, the great majority of the assets of which consist of substantially all of the common stock of two electric utility companies, which with their electric utility subsidiaries, operate in a single area falling within adjacent parts of five States.

The Government obviously regards these facts as material and necessary to any judicial determination of the constitutionality of the Public Utility Act of 1935 as applied to the Electric Bond and Share companies. If the Government did not so regard them it would not have devoted the greater part of its long and complicated bill of complaint to the allegation of such facts in a case which it alleges it is prosecuting for the purpose of having such
38 constitutionality determined. The conclusion is inevitable that the motion to stay must be denied in the case at bar, since there are in this case no such comparable facts.

Fourth. Since the Act may be held constitutional as to certain holding companies and not as to others, depending on the character of the activities of the particular holding company and the nature of its business, the extent and character of its control and domination over its subsidiaries, and the extent to which the company and its subsidiaries are engaged in interstate transmission of services or of electric energy or gas, then it is vitally important both to the industry and to the Government that the litigation being carried forward should not be limited to the single Electric Bond and Share Company case, which presents a situation which is not at all typical of the industry generally, and which in many important respects is very different from the situation presented by the history and activities and corporate set-up of the holding company system of the plaintiff in the case at bar and of many other holding company systems.

Fifth. The Government certainly has no right, legal or equitable, to request special favors of this Court, which require this Court to ignore the rights of other litigants. The Government is not and cannot be entitled to pick its own particular case, in a court of its own choosing, and involving only one or two narrow issues of its own devising, and then have all other cases in all other courts stayed, while the Government takes a year or more to carry its hand picked case to the Supreme Court, leaving all other companies, with other issues and rights, of vital importance to them and their stockholders, to wait indefinitely for a determination of their special and individual rights.

Sixth. Plaintiff is advised by counsel and avers that it has a statutory and constitutional right to have the questions of fact and law raised in the complaint in the case at bar speedily determined and conclusively adjudicated by the Courts of this jurisdiction and the Supreme Court of the United States, without reference to what may be done by the courts of some other jurisdiction in a different case involving different parties and facts and issues, and that any stay of its right to such prompt ascertainment of its constitutional and property rights in this proceeding will cause plaintiff
39 great and irreparable loss and damage, will deprive it of a speedy trial and adjudication as guaranteed by the Constitution of the United States, and will deny to it due process of law and the equal protection of the laws.

Seventh. Plaintiff further says that the ends of justice require that it be allowed to proceed with this case in the orderly manner provided by the rules of this Court, and because of the great importance of the questions and the immense pecuniary interests involved, it offers to cooperate with the defendants in every possible way to procure the hearing and determination by the courts of the issues of fact and law which may be raised in a representative group of test cases, in order that the constitutionality of the Public Utility Holding Company Act of 1935 may be promptly presented and determined.

JOHN C. HIGGINS,
JOHN S. FLANNERY,
JOSEPH P. TUMULTY,
Attorneys for Plaintiff.

SULLIVAN & CROMWELL,
48 Wall Street, New York, N. Y., of Counsel.

[*Duly sworn to by Warren R. Voorhis; jurat omitted in printing.*]

40 In Supreme Court of District of Columbia

Opinion on motion for stay

* * * * * * *

The defendants in these cases have moved for a stay of proceedings pending the determination by the Supreme Court of the United States of the validity of the Public Utility Holding Company Act of 1935 in the case of Securities and Exchange Commission v. Electric Bond and Share Company et al., brought by the former in the District Court of the United States for the Southern District of New York. It appears that in addition to the present suits now pending in this Court brought to enjoin the carrying out of the provisions of that act at least fifty more have been brought in other District Courts. Counsel seem to agree that these latter cases are defective for want of jurisdiction, and that it is likely that if dismissed in the Courts where they are now pending they will be filed in this Court.

The defendants urge that it is practically impossible for them to defend all these suits with the care and ability with which they should be defended; that the plaintiffs are represented by counsel who are specialists and experts in the matters involved in these cases; that the government could with difficulty obtain an adequate number of specially qualified counsel to handle these cases; that the constitutionality of the Act in question will be determined in the Electric Bond and Share case, with reasonable speed and in a suit authorized by the Act, in which no question of jurisdiction can arise.

The plaintiffs oppose the motion upon the grounds that the Court is without power to grant the stay; that if the granting of the stay were a question of discretion, it would be an abuse of discretion to grant it; that many of the questions as to the constitutionality of the Act involved in these cases are not involved in the Electric Bond

and Share case, and that even if the defendants were temporarily enjoined the plaintiffs would in the meantime suffer irreparable injury by the existence of this act upon the statute books, which would affect the validity of their contracts, their transfer of stocks, and other similar matters.

The bills in these cases, which were filed a few days later than the Electric Bond and Share case with the exception of the North
41 American Company case which was filed on the same day, seek to enjoin the defendants from attempting to compel the plaintiffs to comply with this act or to enforce any of its provisions against them, or making applicable to the plaintiffs any rule or regulation under the Act, or instituting any prosecution or action against the plaintiffs, for any violation of the Act or order under it and that the Act be declared unconstitutional in toto.

Before any of these suits were filed the Securities and Exchange Commission issued regulations expressly permitting a holding company when registering to reserve any legal or constitutional right and to stipulate that its registration should be void and of no effect in the event that such a reservation should be judged invalid or ineffective; the Attorney General and the Securities and Exchange Commission announced that the Commission would take the initiative to test the Act in a civil suit that until the validity of the Act had been determined by the Supreme Court in such a civil suit neither the Attorney General nor the Commission would seek to enforce the criminal penalties of the Act, and that even after such determination they would not seek to exact penalties for earlier offenses; and the Postmaster General announced that even if he had the authority, he would not exclude any company from using the mails because of any violation of the Act pending the judicial determination of its validity by the Supreme Court.

In addition the defendants have offered to submit to a temporary injunction pending a decision by the Supreme Court in the Electric Bond and Share case.

As to the power of the Court to grant the stay I have little question, and I think it is within the discretion of the Court. Mr. Chief Justices Hughes, in the case of Enelow v. N. Y. Life Insurance Co., 293 U. S. 379, 381, referred to the exercise of equitable jurisdiction in granting or refusing an injunction and distinguished it from a mere

"stay of proceedings which a court of law, as well as a court of equity, may grant in a cause pending before it by virtue of its inherent power to control the progress of the cause so as to maintain the orderly processes of justice."

This is not an attempt to enjoin a multiplicity of suits, nor a stay as a matter of right by reason of a former suit pending. The
42 Court may grant a stay, or extend the time for pleading, by reason of the absence or illness of parties or counsel, the convenience of the Court, the fact that the issues in a case may be

simplified by decisions in other suits, and it would, I think, be impossible to define all the conditions which might justify a Court, in its discretion, in staying the further progress of a case, not finally, but temporarily.

In the instant case the relief sought by the plaintiffs is, first, a relief by injunction against the defendants, and, second, a declaratory judgment to the effect that the Public Utility Holding Company Act violates the Constitution of the United States and that the Act and each and every part thereof is invalid, null, and void.

As to the injunctive relief sought, the defendants in effect consent to a temporary injunction embracing the same injunctive relief which the plaintiffs seek upon a final hearing. So long as this temporary injunction is in force each of the plaintiffs will obtain the relief sought by injunction. They object to this, however, upon the ground that they will in the meantime suffer irreparable loss by the existence of the statute, resulting from the doubt and uncertainty as to the legality of practically everything that they may do in the ordinary and usual course of their business after December 1, 1935, resulting, as they claim, in an almost complete paralysis of their corporate activities. They claim that a decision of the Electric Bond and Share case will not solve the questions raised in the suits brought by them in this Court, for the former involves only a few provisions of the Act, while the latter cover the Act in its entirety, although the plaintiffs claim in their bills that the different parts of the Act are inseparable, and if void in part, it is void in toto. They seek a declaratory judgment that the Act be declared void, not in so far as it relates to the interests of the plaintiffs, but apparently as a general or abstract proposition. But as well said by counsel for the plaintiffs in their brief:

"* * * Courts do not declare statutes constitutional or unconstitutional as such. The judicial function is to determine whether or not under the facts proven at the trial the application of the legislative enactment to the litigant before the Court invades his constitutional rights."

I do not understand that under the declaratory judgment
43 acts, an act of Congress is a res, and that the Courts determine its constitutionality as if the proceeding were one in rem. If the highest Court declares in any particular case that an act of Congress is beyond the powers granted by the Constitution, that opinion will be followed by the lower Courts in every case that comes before them. Apart from the injunctive relief sought in this case it is difficult to see with whom any remaining controversy may be, unless it might be with the United States, and in that event the Court would have no jurisdiction.

If the defendants, as they state they probably will do, in the event these suits are not stayed, permit them to go by default, it is difficult to see how the plaintiffs would be any better off than if the suits were stayed. If this Court should hold the Act unconstitutional, the final relief would afford them little advantage over the temporary

relief now offered them. It would seem that injunctions against the present defendants might not bind their successors in office and if the Supreme Court should afterwards hold the Act Constitutional, their success in the instant suits would avail them little. Ex parte La Prade, 289 U. S. 444.

Even a consent decree may be modified in invitum where the situation of the parties and conditions have so changed as to render the enforcement of the decree inequitable. United States v. Swift & Company, 286 U. S. 106. And in any event a bill of review for error of law apparent on the record would lie. Rudolph v. Hunt, 52 App. D. C. 343. The plaintiffs seek an early decision by the Supreme Court but they could not appeal from a decree of this Court in their favor, and as said before, I cannot see how their real interests will not be protected by the temporary injunction to which the defendants offer to submit. A decision by the Supreme Court in the Electric Bond and Share case, even if it should not dispose of all the questions involved, would certainly narrow the issues in the pending cases and assist in the determination of the questions of law involved.

The plaintiffs have declined to register with the Securities and Exchange Commission under sec. 5 of the Act, although the Commission has issued regulations permitting a holding company, when registering, to reserve any legal or constitutional right, and to stipulate that its registration would be void, if the reservation should be judged ineffective; and it would seem that they might have registered irrespective of this regulation, without impairing
44 their constitutional rights. As said by Judge Coleman in his opinion in the American States Public Service Company case in the United States District Court at Baltimore:

"Of course, although registering under the Act, the Trustees might still preserve any constitutional right." Citing Union Pacific R. R. Co. v. Public Service Commission, 248 U. S. 67, and Power Co. v. Saunders, 274 U. S. 490, the latter case being especially in point.

The offer of the plaintiffs to a trial of one or two of the instant cases and suspending proceedings in the others has not been consented to by the defendants. They, however, cannot answer for the fifty odd cases now pending in other courts, which, it seems probably will be transferred to this Court. I think that the plan proposed by the defendants would give all the plaintiffs all the protection needed pending a decision by the Supreme Court and save great amount of labor, time, and expense.

Upon the whole I am of the opinion that the motion of the defendants should be sustained, conditioned upon a diligent and active prosecution of the Electric Bond and Share case. In view of their assurances given before the filing of these suits, however, it would hardly seem necessary to issue a formal injunction, unless the plaintiffs insist upon it.

It might be added that I have been informed that the appeal in the American States Public Service Company case will be shortly argued in the Court of Appeals of the fourth Circuit and a decision

by the Supreme Court on the constitutionality of the Act may be had in that case some time before any of the other cases involving this act reach the Supreme Court. The opinion of Judge Coleman in that case holds the Act unconstitutional and void in all respects, and if considered in the nature of a declaratory judgment might render it unnecessary for other Courts to enter similar judgment pending a decision by the Supreme Court.

JENNINGS BAILEY, *Justice.*

45 In Supreme Court of District of Columbia

Order staying further proceedings herein

Filed January 9, 1936

* * * * * * *

This cause coming on to be heard upon motion of the defendants to stay further proceedings herein filed December 7, 1935, the Court having considered the pleadings and the arguments of counsel, and briefs having been submitted herein, it is this 9th day of January 1936:

Ordered, adjudged, and decreed that further proceedings herein be and are hereby stayed, upon the terms and conditions as set forth in the Opinion of this Court in this cause filed herein the 6th day of January 1936.

JENNINGS BAILEY, *Justice.*

No objection to form.

Exception to above order is hereby taken and plaintiff's intention is hereby noted to apply for a special appeal herein to the United States Court of Appeals for the District of Columbia.

J. S. FLANNERY,
Attorney for Plaintiff.

In United States Court of Appeals for District of Columbia

January Term, 1936

No. 2560, Original

Equity 60,146

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, PETITIONER

vs.

JAMES M. LANDIS, GEORGE C. MATHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY, ETC.

Order allowing special appeal

Filed February 18, 1936

On consideration of the petition for allowance of a special
46 appeal in the above entitled cause from the order of the Supreme Court of the District of Columbia entered therein on January 9, 1936, by Mr. Justice Jennings Bailey,

It is ordered by the Court that the petition be and it is hereby granted and a special appeal allowed as prayed.

Per Mr. CHIEF JUSTICE MARTIN.

February 17, 1936.

A true copy.
Test:

HENRY W. HODGES,
Clerk.

By MONCURE BURKE,
Deputy Clerk.

[SEAL]

In Supreme Court of District of Columbia

Notice of motion

Filed February 19, 1936

* * * * * * *

Please take notice that at 9:30 o'clock on February 25, 1936, the defendants James M. Landis, George C. Mathews, Robert E. Healy, James D. Ross, Homer Cummings, and James A. Farley will present the accompanying motion to Justice Bailey in Chambers.

HOMER CUMMINGS,
Attorney General of the United States.
J. L. R.
JOHN J. BURNS,
General Counsel, Securities and Exchange Commission.
J. L. R.

Service of a copy of the aforesaid motion with the accompanying affidavit is hereby acknowledged.

Dated February —, 1936. Washington, D. C.

In Supreme Court of District of Columbia

Motion as to affidavit and exhibits

Filed February 19, 1936

* * * * * * *

The defendants James M. Landis, George C. Mathews, Rob-
47 ert E. Healy, James D. Ross, Homer Cummings, and James A. Farley respectfully represent to this Honorable Court:

1. That on February 17, 1936, the United States Court of Appeals for the District of Columbia allowed a special appeal from the order of this Court, entered on January 9, 1936, staying the proceedings in the above entitled cause upon the terms and conditions set forth in the opinion of this Court filed January 6, 1936.

2. That the facts set forth in the accompanying affidavit of Homer Cummings, Attorney General of the United States and one of the attorneys for the defendants, were presented to this Court at the hearing of the above entitled cause and in the printed briefs filed therein by said defendants, and that the exhibits appended to said affidavit are corroborative of the facts set forth therein.

3. That the said affidavit and exhibits are a convenient and appropriate method of incorporating in the record the facts upon which the opinion and order of this Court were rendered.

4. That there is also appended to said affidavit a copy of the answer and cross-bill filed on January 29, 1936, by the twenty-two defendants in the case of Securities and Exchange Commission v. Electric Bond and Share, et al.

Wherefore defendants move this Honorable Court to order and direct that the said affidavit, together with the exhibits appended thereto, be included in the printed transcript of the record.

HOMER CUMMINGS,
Attorney General of the United States.
JOHN J. BURNS,
General Counsel,
Securities and Exchange Commission.

In Supreme Court of District of Columbia

Affidavit of Homer Cummings

Filed February 19, 1936

* * * * * * *

Homer Cummings, being first duly sworn on oath, deposes and says as follows:

1. He is Attorney General of the United States and one of the attorneys for the defendants in the above entitled causes.

48 2. He makes this affidavit in support of the motion of the defendants in the above entitled causes to stay further proceed-

ings therein until the validity of the Public Utility Holding Company Act of 1935 (herein referred to as the "Act") has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission v. Electric Bond and Share Company et al., now pending in the United States District Court for the Southern District of New York. All of the facts set forth in this affidavit with the exception of Exhibit J described in paragraph 15 were called to the attention of the Court and of opposing counsel in the briefs and oral arguments heretofore submitted on behalf of the defendants in the above entitled causes.

3. On October 9, 1935, the Securities and Exchange Commission promulgated a rule known as "Holding Company Act Rule 4", and on November 22, 1935, amended said rule. A true and correct copy of said rule, as amended, is attached hereto, marked Exhibit A and made a part of this affidavit.

4. On November 21, 1935, affiant, as Attorney General, addressed and transmitted to all United States Attorneys a letter designated as "Circular No. 2780", a true and correct copy of which is attached hereto, marked "Exhibit B" and made a part of this affidavit.

5. On December 7, 1935, affiant, as Attorney General, addressed and transmitted to all United States attorneys a letter designated as "Circular No. 2786", a true and correct copy of which is attached hereto, marked "Exhibit C" and made a part of this affidavit

6. On November 22, 1935, the Securities and Exchange Commission issued to the newspapers for immediate release a press release known as "Release No. 22", a true and correct copy of which is attached hereto, marked "Exhibit D" and made a part of this affidavit.

7. On December 4, 1935, James A. Farley, Postmaster General of the United States, addressed and transmitted to all postmasters a letter, a true and correct copy of which is hereto attached, marked "Exhibit E" and made a part of this affidavit.

8. On November 26, 1935, the Securities and Exchange Commission filed its bill of complaint in the District Court of the United
49 States for the Southern District of New York against the Electric Bond and Share Company, American Gas and Electric Company, American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation, and United Gas Corporation, all of whom have their principal place of business in New York. A true and correct copy of the bill is attached hereto, marked "Exhibit F" and made a part of this affidavit. The Electric Bond & Share Company, controlling nearly 15% of the privately owned electric utility industry in the country, is the best known and one of the oldest of the great holding company systems, and comes in contact with the Act at more points than any other holding company system. Each of the five subsidiary systems joined as parties defendant is comparable in size to the largest of the systems of the plaintiffs in the cases before this Court. On December 21, 1935, pursuant to leave of court, the Securities and Exchange Commission filed its

amended and supplemental bill of complaint in said cause and included sixteen additional subsidiaries as defendants. A true and correct copy of said amended bill is attached hereto, marked "Exhibit G" and made a part of this affidavit. Affiant is informed and believes, and, therefore states, that all of the allegations contained in said amended and supplemental bill of complaint are true.

9. Prior to December 12, 1935, forty-nine proceedings had been filed, and were on said date pending in the District Courts of the United States for thirteen districts seeking an adjudication of the constitutionality of the Public Utility Holding Company Act of 1935. Forty-four such proceedings were filed by electric and gas utility holding companies against members of the Securities and Exchange Commission and other officers of the United States, seeking to enjoin the enforcement of said Act against the respective plaintiffs, and, in most of the cases, further seeking declaratory judgments declaring said Act to be unconstitutional. Five of said proceedings involved litigation between electric or gas utility holding companies, or their receivers or trustees, and stockholders or other private litigants in which proceedings a declaration of the unconstitutionality of said Act is sought. Attached hereto, marked Exhibit H, is a schedule setting forth the names of the plaintiffs in said pro-
50 ceedings, the court in which each such proceeding is pending, and the date upon which the bill of complaint therein was filed.

10. On November 29, 1935, Messrs. Winthrop, Stimson, Putnam & Roberts, attorneys of counsel for Tennessee Electric Power Company, one of the plaintiffs in the above entitled causes, addressed and transmitted to affiant a letter, a true and correct copy of which is hereto attached, marked Exhibit I and made a part of this affidavit.

11. The following facts appear from the so-called Splawn Report (report of the Committee on Interstate and Foreign Commerce of the House of Representatives, made pursuant to H. Res. No. 59, 72nd Cong., 1st Sess., and H. J. Res. No. 572, 72nd Cong., 2nd Sess., House Report No. 827, Part 3):

(a) The North American Company, one of the plaintiffs in the above entitled causes, owns all or substantially all of the voting stock of the North American Edison Company, its principal subholding company, which, in turn, owns all of the voting stock of Union Electric Light and Power Company. Union Electric Light and Power Company, through itself and its subsidiary companies, most of which are wholly owned, transmits power generated at the Keokuk Dam in the State of Illinois, in interstate commerce, into the States of Missouri and Iowa. The North American Company, through intermediate holding companies, also controls other companies which transmit substantial amounts of electric energy across state lines. About one-fifth of the total quantity of electric energy generated by public utility companies which form a part of the

North American Company System is sold in interstate commerce. (Splawn Report, Part 3, page 720.)

(b) Subsidiary operating companies of the United Light & Power Company transmit considerable quantities of electric energy and manufactured and natural gas in interstate commerce. (Splawn Report, Part 3, page 930.)

(c) Operating subsidiaries of the American Water Works and Electric Company transmit substantial quantities of electric energy in interstate commerce. (Splawn Report, Part 3, pp. 50–51.)

(d) The American Water Works and Electric Company and the United Light and Power Company, respectively, have entered into service, sales and construction contracts (as defined in the Pub-
51 lic Utility Holding Company Act of 1935) with subsidiary operating companies, and North American Light and Power Company, a subsidiary holding company of The North American Company, has entered into service, sales and construction contracts with its subsidiaries. (Splawn Report, Part 3, page 52 et seq., page 923 et seq., page 743.)

12. West Penn Electric Company, which is a subsidiary of American Water Works and Electric Company, and controls all of the electric utility properties in the American Water Works and Electric Company System, has instituted proceedings against the Securities and Exchange Commission and others in the United States District Court for the District of Maryland to enjoin the enforcement of the Act. North American Edison Company and North American Light & Power Company, two large intermediate holding company subsidiaries of the North American Company, have instituted proceedings against the Securities and Exchange Commission and others in the United States District Court for the District of Delaware to enjoin the enforcement of the Act. The New Empire Corporation and Central States Electric Company, holding companies which are affiliates of the North American Company and included in the North American System have not filed any independent proceedings or joined in any proceedings filed by subsidiary companies in the system.

13. Commonwealth & Southern Corporation, of which the Tennessee Electric Power Company, one of the plaintiffs in the above entitled causes, is a subsidiary, has instituted proceedings against the Securities and Exchange Commission and others in the United States District Court for the District of Delaware to enjoin the enforcement of the Act.

14. The Columbus Railway Power and Light Company, a subsidiary of the United Light & Power Company, one of the plaintiffs in the above entitled causes, has instituted proceedings against the Securities and Exchange Commission and others in the United States District Court for the Southern District of Ohio to enjoin the enforcement of the Act.

15. On January 29, 1936, after the opinion and order in this cause, the Electric Bond and Share Company and twenty-one other defend-

ants filed their answer and cross-bill in the case of Securities
52 and Exchange Commission v. Electric Bond and Share et al., a true and correct copy of which is attached hereto, marked Exhibit J.

HOMER CUMMINGS.

Subscribed and sworn to before me this 19th day of February 1936.

[SEAL] UGO J. A. CARUSI,
Notary Public.

Exhibits

Filed February 19, 1936

Exhibit A to affidavit

RULE 4. Reservation of constitutional or legal rights.—Any person filing, signing, or certifying to, any notification, statement, application, declaration, report, or other document pursuant to the Act, the Rules and Regulations, or any order of the Commission under the Act or the Rules and Regulations, may include therein in behalf of such person or of any other person affected thereby an express reservation of, and refusal to waive, any constitutional or legal rights.

If the reservation or refusal to waive asserted by or on behalf of any such person or persons shall be held invalid or inoperative by any court of competent jurisdiction, such filing, signing, or certifying may, at the option of any such person or persons, be deemed to have been void and of no effect from any date specified in written notice given to the Commission, by or in behalf of such person or persons, except that the validity of transactions which otherwise might be impaired by reason of the voidance and ineffectiveness of such filing, signing, or certifying, shall not be affected thereby.

The acceptance of any order, rule, or regulation, or the compliance with any provision of the Act, of the Rules and Regulations, or of any order or direction of the Commission shall not be deemed a waiver of any constitutional or legal rights.

53 *Exhibit B to affidavit*

DEPARTMENT OF JUSTICE,
Washington, D. C., November 21, 1935.

Circular No. 2780

To All United States Attorneys:

The Public Utility Holding Company Act of 1935 makes specified transactions by the use of the mails or instrumentalities of Interstate Commerce illegal for certain public utility holding companies

after December 1, 1935, unless such companies are registered with the Commission.

The Edison Electric Institute, a trade organization, whose membership includes a number of utility holding companies, has announced that it has retained counsel to contest the constitutionality of the Act. Consequently, it is probable that a number of companies will fail to register under the Act.

It is, of course, not the purpose of the Government to harass the utility industry with a needless multiplicity of suits. Equally, however, there is no public interest to be served by vexing the Government with a multiplicity of injunction suits which might embarrass and harass the Government in defending the constitutionality of the Act and which might result in the presentation of the issue of constitutionality on the basis of an inadequate record or a record not fairly typical of the situations covered by the Act.

Section 18 of the Act places the duty of investigating violations of the Act upon the Securities and Exchange Commission, which may transmit evidence "to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings."

In enforcing the Act it is proposed promptly to institute civil proceedings against one or more large and important companies who may fail to register to enforce compliance with its provisions and to seek decisions from the Supreme Court sustaining the validity of the Act. In the meanwhile it is not proposed to institute
54 criminal proceedings, and if later it should become necessary to institute criminal proceedings against any company, it is not the intention of this department to seek to exact penalties for earlier offenses which might unduly penalize the investors in the offending company.

In view of the foregoing, the Department suggests that you refrain from bringing or threatening to bring any criminal proceedings under the Act. If any injunction proceeding is instituted against you, you will thus be in a position to disclaim any present threat of any criminal proceeding under such Act. Such disclaimer should be sufficient to dispose of any restraining order which may be sought against you under the authority of Spielman Motor Sales Co. v. Dodge, 295 U. S. 89, decided April 29, 1935; Sparks v. Mellwood, 74 F. (2d) 695 (C. C. A. 6th, 1934); Richmond Hosiery Mills v. Camp, 74 F. (2d) 200 (C. C. A. 5th, 1934); Campbell v. Medalie, 71 F. (2d) 671 (C. C. A. 2d, 1934); McKee v. Rudolph, 12 F. (2d) 148 (C. A. D. C., 1926); Cave v. Rudolph, 287 F. 989 (C. A. D. C., 1923).

You will promptly inform this Department, nevertheless, of any action which may be instituted in your District, whether or not you are made a party, to attempt to test the validity of the Act.

HOMER CUMMINGS,
Attorney General.

Exhibit C to affidavit

DEPARTMENT OF JUSTICE,
Washington, D. C., December 7, 1935.

Circular No. 2786

To All United States Attorneys:

1. In Circular No. 2780, November 21, 1935, you were advised that the Government would promptly institute civil proceedings to enforce compliance with the Public Utility Holding Company Act of 1935; that in accordance with the discretion vested in the Attorney General under section 18 (f) of that Act, the Attorney General would not sanction the institution of criminal proceedings for
55 violations of the Act before the validity of the Act was judicially determined by the Supreme Court, nor would he thereafter sanction the exaction of penalties for prior offenses; and that you should refrain from bringing or threatening to bring any criminal proceedings under the Act.

2. On November 26, the Government instituted a civil suit in the Southern District of New York against Electric Bond and Share Company and five of its principal subsidiary holding companies to enforce compliance with the Act, and shortly thereafter consented to the intervention in that suit of sixteen additional subsidiary holding companies in the Electric Bond and Share system. The major issues concerning the constitutionality of the Act, in so far as such issues may legally be raised at this time, will be promptly, effectively, and fairly tested and adjudicated in this suit.

3. The Attorney General and the Securities and Exchange Commission have taken the position, on the authority of Union Pacific R. R. Co. v. Public Service Commission, 248 U. S. 67; Terral v. Burke Construction Co., 257 U. S. 529; Power Manufacturing Co. v. Saunders, 274 U. S. 490, that registration does not constitute a waiver of any constitutional rights. In its Holding Company Act, Release No. 22, November 22, 1935, the Securities and Exchange Commission reiterated that "the Commission under its rule-making power expressly permits the registrant to reserve his constitutional rights", and further announced that "the Commission is prepared to go further and accept a notification that expressly stipulates that the notification of registration will at the option of the registrant be deemed void if registrant's reservation of its constitutional rights is adjudged void or ineffective."

4. Despite the efforts of the Government to test the validity of the Act in an orderly and economical manner, and in the meanwhile to safeguard every legal and constitutional right of the private interests affected, not only have a multitude of unnecessary suits been brought against government officials, but a number of stockholders' suits have been brought against various companies with a view to testing the constitutionality of the Act in proceedings in which the Government or its officers are not even parties. In light of the action

taken by the Government to safeguard the rights and interests
56 of both registering and non-registering companies, it may be questioned whether such stockholders' suits are brought in good faith and are free from collusion as is required under Equity Rule 27 as interpreted by the Supreme Court. Corbus v. Gold Mining Co., 187 U. S. 455; Wahen v. Jackson Oil & Refining Co., 235 U. S. 635. It is true that there are cases where in the absence of collusion a stockholder has been allowed to sue to enjoin the payment of an allegedly unconstitutional tax where the company is threatening to pay the tax without protest and thereby (under the law then in force) threatening to deprive itself of any opportunity of subsequently recovering the tax. Pollock v. Farmers Loan & Trust Co., 157 U. S. 429; Brushaber v. Union Pacific Railroad Company, 240 U. S. 1. But such cases are not at all comparable to an action by a stockholder to enjoin the simple act of registration which involves no waiver of any constitutional right. The only other cases where such stockholders' suits have been permitted, Smith v. Kansas City Title and Trust Co., 255 U. S. 180, and Hill v. Wallace, 259 U. S. 44, are similarly inapplicable, for in each, if the statute challenged were unconstitutional, the action of the Directors sought to be enjoined was unlawful under state law or a clear abuse of their powers of management.

5. The Government takes the position that any action by a stockholder to enjoin or to compel registration cannot bring into issue the question of constitutionality, but at most only the question of the good faith and prudent conduct of the management. The Government at the present time does not plan to intervene or take any part in any action brought by a stockholder to test the constitutionality of the Act.

6. Inasmuch as it will in many cases be impossible for the District Attorneys to know of the existence of these suits, you are requested to bring this circular to the attention of the Circuit Judges in your circuit and to the District Judges in your district so that they may be apprised of the Government's position in the event that any such stockholders' suits come before them.

HOMER CUMMINGS,
Attorney General.

57 *Exhibit D to affidavit*

For immediate release in newspapers of Friday, November 22, 1935.

Securities and Exchange Commission, Washington

Holding Company Act

Release No. 22

The Securities and Exchange Commission today officially authorized the issuance of the following statement:

(1) The Public Utility Holding Company Act of 1935 makes specified transactions by the use of the mails or instrumentalities of Interstate Commerce illegal for certain public utility holding companies after December 1, 1935, unless such companies are registered with the Commission. To date the number of notifications of registration filed under the Act has been negligible. The Edison Electric Institute, a trade organization, whose membership includes many public utility holding companies subject to the Act, has announced that it has retained counsel to contest the constitutionality of the Act.

(2) Section 18 of the Act authorized the Commission to enforce compliance with the Act. And it is the purpose of the Commission to proceed promptly with the administration and enforcement of the law.

(3) However, it is the purpose of the Commission to proceed with the enforcement of the Act in an orderly and economical manner. The Commission will not harass the industry with a multiplicity of suits. And the Commission will resist any effort that may be made to vex the Government with a multiplicity of suits or to provoke litigation with a view of presenting the issue of constitutionality on the basis of an inadequate record or a record not fairly typical of the situations covered by the Act.

(4) If there is a general failure to register under the Act, the Commission will proceed promptly to bring civil proceedings against one or more large and important companies who may fail to register to enforce compliance with the Act and to seek decisions from
58 the Supreme Court sustaining its validity. In the meanwhile, at least for the immediate future and until further notice, the Commission does not intend to make any recommendations to or requests upon the Department of Justice for the institution of proceedings to enforce criminal liabilities under the Act. The Commission understands that the Attorney General has sent a circular to District Attorneys setting forth the attitude of the Department of Justice.

(5) Counsel for the Commission is firmly of the opinion that registration does not constitute a waiver of any constitutional right which the registering company may have. And the Commission under its rule-making power expressly permits the registrant to reserve his contitutional rights. The Commission is prepared to go further and accept a notification that expressly stipulates that the notification of registration will, at the option of the registrant, be deemed void if registrant's reservation of its constitutional rights is adjudged void or ineffective. No possible ground in reason remains for any company to fail to file a simple notification and registration under these circumstances as a sheer precautionary matter for the protection of its investors.

Exhibit E to affidavit

To Postmasters

OFFICE OF THE POSTMASTER GENERAL,
Washington, December 4, 1935.

The Public Utility Holding Company Act of 1935 makes it unlawful for certain holding companies to use the mails for specified purposes after December 1, 1935, unless such companies are registered with the Securities and Exchange Commission. It is probable that a number of such holding companies will not register under the act.

The Attorney General in Department of Justice Circular No. 2780, sent to all United States attorneys on November 21, 1935, and the Securities and Exchange Commission in its Holding Company Act, Release No. 22 of November 22, 1935, have announced that it is not the intention of the Government to institute criminal proceedings under the act pending the authoritative adjudication of civil
59 proceedings which will promptly be instituted by the Government under section 18 (f) of the act against one or more representative companies to compel compliance with the act.

Whatever may be the authority, if any, of the Postmaster General to exclude from the mails matter sent in violation of the act, the Postmaster General does not intend to exclude any company from using the mails, at least not before the validity of the act is judicially determined by the Supreme Court. You will accordingly take no steps to exclude unregistered holding companies from the use of the mails.

JAMES A. FARLEY,
Postmaster General.

(The Postal Bulletin, Washington, December 5, 1935.)

Note

Exhibit F same as exhibit attached to answer of plaintiff to defendants' motion for a stay, etc.

Exhibit G to affidavit

In the District Court of the United States for the Southern District of New York

In Equity. No. E 81–378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER

& Light Company, Electric Power & Light Corporation, United Gas Corporation, Defendents; and Power Securities Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, Lehigh Power Securities Corporation, Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, The Washington Water Power Company, Pennsylvania Power & Light Company, Easton Consolidated Electric Company, intervening defendants

60 *Amended and Supplemental Bill of Complaint*

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, Sitting in Equity:

The Securities and Exchange Commission brings this civil suit in equity by its solicitors, John J. Burns, General Counsel, and Robert H. Jackson, Special Counsel, against Electric Bond and Share Company, American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, United Gas Corporation, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company, and Lehigh Power Securities Corporation, and respectfully represents to this Honorable Court as follows:

I

That on November 26th, 1935, the plaintiff filed its original bill of complaint herein. That on December 6th, 1935, an order was entered by this court in this cause granting leave to Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company, the Washington Water Power Company, Lehigh Power Securities Corporation, Pennsylvania Power and Light Company, and Easton Consolidated Electric Company to intervene herein as parties defendant and to file answers and cross-bills to plaintiff's bill of complaint. That plaintiff seeks no relief against intervenors, Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, The Washington Water Power Company, Pennsylvania Power & Light Company, and Easton Consolidated Electric Company, for reasons hereinafter appearing.

61

II

1. That the following terms, wherever they appear herein, are used in the sense defined by Section 2 (a) of the Act: Public utility company; electric utility company; gas utility company; holding company; subsidiary company; holding company system; affiliate; registered holding company; security; voting security; utility assets; service contract; sales contract; construction contract.

2. That the term "defendants", when used in this complaint, except when the context otherwise indicates, means:

Electric Bond and Share Company;
American Gas and Electric Company;
American Power & Light Company;
Electric Power & Light Corporation;
National Power & Light Company;
United Gas Corporation;
Power Securities Corporation;
Idaho Power Company;
Utah Power & Light Company;
United Gas Public Service Company;
Houston Gulf Gas Company;
The Montana Power Company;
Nebraska Power Company;
Pacific Power & Light Company; and
Lehigh Power Securities Corporation.

III

That it appears to the plaintiff Commission that the defendants and each of them since December 1, 1935, have engaged, are now engaged, and will continue to engage in acts and practices which constitute and will constitute a violation of the provisions of the Public Utility Act of 1935 and of the rules, regulations, and orders thereunder, and the plaintiff therefore brings this suit in its own right pursuant to section 18 (f) and section 18 (g) of Title I of the said Act for the purpose of enjoining and restraining the defendants from violating the provisions of section 4 (a), (1), (2), (3), (4), (5), and (6) of the Act and for the purpose of requiring the defendants to register pursuant to the provisions of section 5 of the Act. That jurisdiction of this suit is conferred upon this Honorable Court by section 25 of the Act.

62

IV

That each of the defendants is a duly organized and existing corporation, their respective States of Incorporation being:

Defendant	State of Incorporation
Electric Bond and Share Company	New York.
American Gas and Electric Company	New York.

Defendant	State of incorporation
American Power & Light Company	Maine.
Electric Power & Light Corporation	Maine.
National Power & Light Company	New Jersey.
United Gas Corporation	Delaware.
Power Securities Corporation	New Hampshire.
Idaho Power Company	Maine.
Utah Power & Light Company	Maine.
United Gas Public Service Company	Delaware.
Houston Gulf Gas Company	Delaware.
The Montana Power Company	New Jersey.
Nebraska Power Company	Maine.
Pacific Power & Light Company	Maine.
Lehigh Power Securities Corporation	Delaware.

That none of the defendants has made application to the Securities and Exchange Commission (a) under section 2 (a) (7) (b) of the Act for an order declaring that it is not a holding company within the meaning of said Act, or (b) under section 3(a) or any other section of the Act, for an order exempting it from any provision of the Act, and that the Commission has made no such order. That none of said defendants has registered with the Securities and Exchange Commission pursuant to Section 5 of the Act, and that the defendants have advised and notified the Commission that they will not register pursuant to section 5 of the Act.

V

That each of the defendants, American Power & Light Company, American Gas and Electric Company, Electric Power & Light Corporation, United Gas Corporation, National Power & Light Company, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company,
63 Nebraska Power Company, Pacific Power and Light Company, and Lehigh Power Securities Corporation, is a holding company as defined by section 2 (a) (7) (A) of the Act, in that it owns, controls, or holds with power to vote ten percentum or more of the outstanding securities of one or more companies which are public utility companies within the meaning of section 2 (a) (3), (4), and (5); and that defendant Electric Bond and Share Company is a holding company as defined by section 2 (a) (7) (A) of the Act, in that it owns, controls, or holds with power to vote ten percentum or more of the outstanding voting securities of the defendants American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company, each of which is a holding company within the meaning of the said Act.

VI

That Electric Bond and Share Company is the top holding company in a holding company system, commonly known and sometimes hereinafter referred to as the Electric Bond and Share System, and

which system includes all of the other defendants, as well as many other corporations. That the defendants American Gas & Electric Company, American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company are intermediate holding companies in the Electric Bond and Share System. Each such intermediate holding company, together with its subsidiary holding companies and public utility companies, is likewise a holding company system, commonly known and sometimes hereinafter referred to, respectively, as the American Gas & Electric System, the American Power & Light System, the Electric Power & Light System, and the National Power & Light System.

That the defendants The Montana Power Company, Nebraska Power Company, and Pacific Power & Light Company are subsidiaries of the defendant American Power & Light Company and are included within the American Power & Light System.

That the defendants United Gas Corporation, United Gas Public Service Company, Houston Gulf Gas Company, Utah Power & Light Company, Power Securities Corporation, and Idaho Power
64 Company are all subsidiaries of the Electric Power & Light Corporation and included within the Electric Power & Light System.

That the defendant Lehigh Power Securities Company is a subsidiary of National Power & Light Company and included within the National Power & Light System.

That defendant Electric Bond and Share Company, through its stock ownership in and control of the defendants American Power and Light Company, American Gas and Electric Company, Electric Power and Light Corporation, and National Power and Light Company owns and controls electric and gas utility companies which are subsidiaries, as defined by the Act, of the defendants American Gas and Electric Company, American Power and Light Company, Electric Power and Light Company or National Power and Light Company, and which own and operate electric utility assets and gas utility assets.

That the operating revenues of the Electric Bond and Share system are primarily derived from the sale of natural and manufactured gas and electric energy.

That the electric customers of the Electric Bond and Share system number over 2,300,000 and its revenues are derived from properties located in 32 states of the United States.

That its electric properties are generally divided and grouped in seven large interconnected interstate groups which transmit annually a total of approximately 13,000,000,000 kilowatt hours of electric energy, about 3,000,000,000 of which are transmitted across state lines.

That its gas properties form interconnected interstate systems for the production and transmission of manufactured and natural gas. That the gas utilities of the system operate in fifteen states and one foreign country; that the producing properties of this system

embrace approximately 1,428,000 acres of gas field; that the system owns or controls more than nine thousand miles of pipe lines used in the transmission of gas; that the system serves in excess of 450,000 customers; and that the yearly production of the system amounts to more than two hundred billion cubic feet of natural and manufactured gas, in excess of sixty billion of which are transported across state lines.

That the outstanding stock of the Electric Bond and Share
65 Company is owned by more than 130,000 stockholders located in every state of the United States, in each of its possessions, and in many foreign countries.

VII

That the defendants are now doing and will continue to do the following acts forbidden to unregistered holding companies by the provisions of section 4 (a) of the Act, as hereinafter more particularly set forth:

1. That since December 1, 1935, directly or indirectly, each and all of the defendants have engaged and will continue to engage in selling, transporting, transmitting, or distributing natural or manufactured gas and electric energy and have owned or operated and will continue to own or operate utility assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy, in interstate commerce, as forbidden to unregistered holding companies by section 4 (a) (1) of the Act.

2. That directly or indirectly defendants Electric Bond and Share Company and American Gas and Electric Company have negotiated and entered into by use of the mails or means or instrumentalities of interstate commerce service, sales, and construction contracts, within the meaning of section 2 (a) (18), (19), and (20), undertaking to perform service, sales, and construction work for, and to sell goods to, public utility companies or holding companies and in the normal course of business since December 1, 1935, have continuously engaged and will continue to engage, either in their own names or through wholly owned subsidiaries, by use of the mails or means or instrumentalities of interstate commerce, in taking steps in the performance of such contracts, or similar contracts, similarly entered into, as forbidden to unregistered holding companies by section 4 (a) (2) of the Act.

3. That directly or indirectly each of the defendants has distributed or made public offerings for sale or exchange, and will continue as its business needs require to distribute or make public offerings for sale or exchange of its securities or the securities of its subsidiary companies or affiliates, by use of the mails or means
or instrumentalities of interstate commerce; and have sold
66 and will continue to sell as its business needs require such securities having reason to believe that such securities, by use

of the mails or means or instrumentalities of interstate commerce, will be distributed or made the subject of public offerings, as forbidden to unregistered holding companies by section 4 (a) (3) of the Act.

4. That directly or indirectly each of the defendants, by use of the mails or means or instrumentalities of interstate commerce has acquired or negotiated for, and will continue as its business needs require to acquire, or negotiate for the acquisition of securities of its subsidiary companies or affiliates, or of public utility or holding companies, as forbidden to unregistered holding companies by section 4 (a) (4) of the Act.

5. That since December 1, 1935, the defendants Electric Bond & Share Company and American Gas & Electric Company, in doing the acts described in sub-paragraph (2) of this paragraph, and all of the defendants in doing the acts described in sub-paragraphs (1), (3), and (4) of this paragraph have engaged, and will continue to engage, in business in interstate commerce, as forbidden to unregistered holding companies by Section 4 (a) (5) of the Act.

6. That directly or indirectly each and all of the defendants own, control, or hold with power to vote securities of subsidiary companies which sell, transport, transmit, or distribute natural or manufactured gas or electric energy and which own and operate utility assets for the transportation, transmission, or distribution of natural or manufactured gas or electric energy, in interstate commerce, as forbidden to unregistered holding companies by section 4 (a) (6) of the Act.

7. That directly or indirectly defendant Electric Bond and Share Company owns, controls, or holds with power to vote all of the outstanding securities of one or more subsidiary companies which, in the ordinary course of their business, by use of the mails or means or instrumentalities of interstate commerce, are engaged in taking steps in the performance of service, sales, or construction contracts, undertaking to perform services or construction work for or sell goods to public utility companies or holding companies, as forbidden to unregistered holding companies by section 4 (a) (6) of the Act.

67 VIII

1. That defendant Electric Bond and Share Company owns voting securities of the defendants American Gas and Electric Company, American Power & Light Company, Electric Power & Light Corporation, United Gas Corporation, and National Power & Light Company in the following amounts:

A. 846,985 shares of the common stock of defendant American Gas and Electric Company, constituting 17.51 per centum of the voting securities of said company.

B. 51,840 shares of the $5 Preferred Stock and 987,213 shares of the common stock of defendant American Power & Light Company,

constituting 20.77 per centum of the voting securities of said company.

C. 485 shares of the $7 Preferred Stock and 1,976,638 shares of the common stock of defendant Electric Power & Light Corporation, constituting 47.20 per centum of the voting securities of said company.

D. 752,666 shares of common stock of defendant United Gas Corporation, constituting 7 per centum of the voting securities of said company. Defendant Electric Power & Light Corporation owns 884,610 shares of the $7 Second Preferred Stock and 3,795,086 shares of the common stock constituting 61.58 per centum of the voting securities of said company.

E. 2,540,438 shares of the common stock of defendant National Power & Light Company, constituting 46.56 per centum of the voting securities of said company.

2. That defendant Electric Bond and Share Company owns all the capital stock of Ebasco Services Incorporated which, in turn, owns all the capital stock of Phoenix Engineering Corporation, and Two Rector Street Corporation.

IX

1. That defendant American Gas and Electric Company owns all or substantially all the voting securities of the following public utility companies, which are also holding companies:

A. Atlantic City Electric Company, which in turn owns 50 per centum of the voting securities of Deepwater Operating Company, a public utility company.

68 B. The Ohio Power Company, which in turn owns 50 per centum of the voting securities of Beech Bottom Power Company, Inc., a public utility company.

C. The Scranton Electric Company, which in turn owns 50 per centum of the voting securities of Stanton Operating Company, a public utility company.

D. Appalachian Electric Power Company, which in turn owns all of the voting securities of Kentucky and West Virginia Power Company, Inc., and Kingsport Utilities, Inc., both public utility companies.

2. That defendant American Gas and Electric Company owns all or substantially all of the coting securities of the following public utility operating companies:

A. Indiana General Service Company.

B. Indiana and Michigan Electric Company.

C. Wheeling Electric Company.

D. Southern Ohio Public Service Company.

X

1. That defendant American Power & Light Company owns all or substantially all of the voting securities of the following public utility companies which are also holding companies:

A. Defendant Montana Power Company which in turn owns all or substantially all of the voting securities of Idaho Transmission Company, a public utility company.

B. Defendant Nebraska Power Company which in turn owns all or substantially all of the voting securities of Citizen's Power and Light Company, a public utility company.

C. Defendant Pacific Power and Light Company which in turn owns all or substantially all of the voting securities of Inland Power and Light Company, a public utility company.

D. The Washington Water Power Company, which in turn owns all or substantially all of the voting securities of Chelan Electric Company, a public utility company.

2. That defendant American Power & Light Company owns all or substantially all of the voting securities of the following public utility companies:

A. Central Arizona Light & Power Co.
B. Florida Power and Light Company.
C. Kansas Gas and Electric Company.
D. Minnesota Power and Light Company.
E. Montana Power Gas Company.
F. New Mexico Electric Service Company.
G. Northern Power Company.
H. Texas Electric Service Company.
I. Texas Power and Light Company.
J. Texas Public Utilities Corporation.

3. That defendant American Power & Light Company owns 84.03% of the voting securities of Portland Gas and Coke Company, 66.57% of the voting securities of Superior Water, Light and Power Company, and 67.63% of the voting securities of Northwestern Electric Company, all public utility companies.

XI

1. That defendant Electric Power & Light Corporation owns all or substantially all of the voting securities of the defendant Power Securities Corporation, a holding company. Defendant Power Securities Corporation owns all or substantially all of the voting securities of the defendant Idaho Power Company, a public utility company and holding company. Idaho Power Company owns all or substantially all of the voting securities of the Nevada Power Company and Salmon River Power & Light Company, both public utility companies.

2. That defendant Electric Power & Light Corporation owns all or substantially all of the voting securities of the defendant Utah Power & Light Company, a holding company and public utility company. That Utah Power & Light Company owns all or substantially all of the voting securities of the Utah Light & Traction Company, Western Colorado Power Company, and Bountiful Light & Power Company, all public utility companies.

3. That defendant Electric Power & Light Corporation owns all or substantially all of the voting securities of the following public utility operating companies:

A. Arkansas Power and Light Company.

B. Louisiana Power and Light Company.

C. Mississippi Power and Light Company.

D. New Orleans Public Service, Incorporated.

70 4. That defendant Electric Power & Light Corporation owns 69.98% of the voting securities of Dallas Power and Light Company, a public utility company, and 61.58% of the voting securities of defendant United Gas Corporation, a public utility company and holding company, as hereinafter alleged.

XII

1. That defendant United Gas Corporation owns all or substantially all of the voting securities of defendant United Gas Public Service Company, its principal subsidiary operating company, which in turn owns all or substnatially all of the voting securities of United Production Company, Southern Gas and Fuel Company, Compania Mexicana de Gas, S. A., Southern Gas Utilities, Inc., Northern Texas Utilities Company, all public utility companies, and defendant Houston Gulf Gas Company, a public utility company and holding company.

2. That defendant Houston Gulf Gas Company in turn owns all or substantially all of the voting securities of Houston Gas and Fuel Company, a public utility company.

3. That defendant United Gas Corporation in addition to the above named companies, owns substantial amounts of the voting securities of the following public utility companies in approximate percentages as follows:

A. Mississippi River Fuel Corporation—47%.

B. El Paso Natural Gas Company—27%.

C. Natural Gas Company, Inc.—50%.

XIII

1. That defendant National Power & Light Company owns all or substantially all of the voting securities of defendant Lehigh Power Securities Corporation, a holding company, which in turn owns voting securities of the following public utility companies which are also holding companies:

A. All or substantially all of the voting securities of Lehigh Valley Transit Company, which owns all or substantially all of the voting securities of Easton Consolidated Electric Company. Easton Consolidated Electric Company in turn owns all or substantially all of the voting securities of Edison Illuminating Company of Easton, a public utility company.

71 B. 75.63% of the voting securities of Pennsylvania Power and Light Company, which owns all or substantially all of the outstanding voting securities of the following public utility companies:

(1) The Carlisle Gas and Water Company.
(2) Columbia Gas Company.
(3) Lehighton Electric Light and Power Company.
(4) Pine Grove Electric Light, Heat, and Power Company.
(5) Shenandoah Light, Heat, and Power Company.
(6) Susquehanna Gas Company.

2. That defendant National Power and Light Company owns all or substantially all of the voting securities of the following public utility companies:

A. Birmingham Electric Light Company.
B. Carolina Power and Light Company.
C. Holston River Electric Company.
D. Houston Lighting and Power Company.
E. Memphis Power and Light Company.
F. Roanoke River Power Company.
G. Tennessee Public Service Company.
H. West Tennessee Power and Light Company.

3. That defendant National Power and Light Company, in addition to the companies named above, also owns approximately 17 per cent of the outstanding voting securities of the Memphis Natural Gas Company, a pipeline company which transmits gas from Louisiana through Arkansas and Mississippi into Tennessee.

XIV

That the following holding companies, which are members of the Electric Bond and Share System and are more specifically described in paragraphs IX, X, and XIII hereof, have not been included in paragraph two hereof as defendants:

American Gas and Electric System:
Appalachian Electric Power Company.
The Ohio Power Company.
The Scranton Electric Company.
Atlantic City Electric Company.

72 American Power and Light System:
Washington Water Power Company.

National Power and Light System:
Pennsylvania Power and Light Company.
Lehigh Valley Transit Company.
Eastern Consolidated Electric Company.

That said companies have been omitted from the list of defendants in paragraph two hereof, by reason of the following: On November 29, 1935, the plaintiff, Securities and Exchange Commission, acting pursuant to the authority conferred upon it by Section 3 (a) of the

Act, adopted a rule known as rule 3 A–2, a copy of which rule is attached hereto, marked "Exhibit A" and made a part hereof. Said rule, subject to the time limitations therein specified, exempts the holding companies of the classes therein described from any obligation, duty, or liability imposed by the Act. From the information now available to the plaintiff it appears to said plaintiff that said Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Washington Water Power Company, Pennsylvania Power and Light Company, Lehigh Valley Transit Company *Company*, and Eastern Consolidated Electric Company are companies which are included within one or more of the classes of companies specified in said rule and are, therefore, now exempt, under the terms of said rule, from any obligation, duty, or liability imposed by the Act, and specifically are by said rule exempt from the requirement of registration under Section 5 of the Act.

XV

1. That each of the operating electric utility companies included within the Electric Bond & Share System is engaged in the business of generating or receiving electric energy and delivering and distributing such electric energy for sale. That a large amount of the electric energy generated and received by the electric utility companies in the system is transmitted in interstate commerce from the state in which it is generated to the states in which it is distributed and consumed. That many of the electric utility companies in the Electric Bond & Share System own, or lease and operate,
73 utility assets for the transmission of, or take part in the transmission of, large amounts of electric energy in interstate commerce. That many of the electric utility companies in the system own, or lease and operate, electric power lines which cross state lines, and that such companies transmit in interstate commerce energy generated in one state to other states in which such energy is delivered, distributed, and consumed. That many of the electric utility companies in the system own or lease and operate power lines over which such companies transmit electric energy generated in one state to the borders of such state, and that at such borders, these power lines are connected with the power lines of electric utility companies operating in contiguous states, where such electric energy is delivered, distributed, and consumed. That many of the electric utility companies in the Electric Bond & Share System receive electric energy in one state which has been generated in and transmitted from another state, and distribute and deliver such electric energy for consumption in the state in which it is received.

That electric energy which is transmitted in interstate commerce and across state lines is herein for convenience referred to as "interstate electric energy" and that the generation, receipt, transmission, delivery, or distribution of electric energy is herein for convenience

referred to as "handling." That, during the year 1933, (a) the total quantity of all electric energy handled by each operating electric utility company in the Electric Bond & Share System, (b) the quantity of interstate electric energy handled by each such company, and (c) the ratio of the interstate electric energy handled by each such company to the aggregate amount of electric energy handled by such company was as follows:

Company	Total quantity of electric energy handled (1,000 kilowatt-hours)	Interstate electric energy handled (1,000 kilowatt-hours)	Ratio interstate handled to total handled
American Gas & Electric System:			
Atlantic City Electric Co	193,920		
(Includes energy supplied by Deep Water Operating Company.)			
Appalachian Electric Power Co	1,348,491	982,370	72.8
(Includes Kentucky-West Virginia Power Co. and Kingsport Utilities, Inc.)			
Indiana General Service Co	130,085		
Indiana & Michigan Electric Co	487,239	364,095	74.7
Ohio Power Co	1,804,945	888,244	49.2
(Includes energy supplied by Beech Bottom Power Co., Southern Ohio Public Service Co. and Ohio State Power Co.)			
Scranton Electric Co	240,555		
(Includes energy supplied by Scranton Operating Company.)			
Wheeling Electric Co	92,040	9,270	10.1
American Power & Light System:			
Central Arizona Light & Power Co	76,137		
Florida Power & Light Co	187,184		
Kansas Gas & Electric Co	225,142	7,411	3.3
Minnesota Power & Light Co	306,679	30,747	10.0
Montana Power Co	889,412	17,886	2.0
(Includes Idaho Transmission Co.)			
Nebraska Power Co	314,903	24,458	7.8
(Includes Citizens Power & Light Co.)			
New Mexico Electric Service Co	2,020		
Northern Power Co	18,396	18,396	100.0
Northwestern Electric Co	266,944	123,543	46.3
Pacific Power & Light Co	327,033	50,725	15.5
(Includes Inland Power & Light Co.)			
Superior Water, Light & Power Co	12,685	12,351	97.4
Texas Electric Service Co	399,417		
Texas Power & Light Co	492,276		
Texas Public Utilities Corp	1,740		
Washington Water Power Co	652,882	209,663	32.1
Electric Power & Light System:			
Arkansas Power & Light Co	295,801	184,007	62.2
Dallas Power & Light Co	210,132		
Louisiana Power & Light Co	530,646	309,822	58.4
Mississippi Power & Light Co	132,668	126,559	95.4
New Orleans Public Service, Inc	296,420		
Utah Power & Light Co	486,101	242,159	49.8
(Includes Utah Light and Traction Company.)			
Western Colorado Power Co	20,212		
Idaho Power Co	402,652	16,390	4.1
Salmon River Power & Light Co	626		
Nevada Power Co	441	441	100.0
Bountiful Light & Power Co	812		
National Power & Light System:			
Birmingham Electric Co	196,012		
Carolina Power & Light Co	969,965	572,770	59.1
Holston River Co	1,333		
Houston Lighting & Power Co	442,878		
Pennsylvania Power & Light Co	1,575,896	43,435	2.8
(Includes Lehighton Electric Light and Power Co., Carlisle Gas and Water Co., and Pinegrove Electric Light Heat and Power Co., and energy supplied by Scranton Operating Co. and Canestoga Transmission Co.)			
Memphis Power & Light Co	169,511	752	0.4
Tennessee Public Service Co	90,238	89,821	99.5
West Tennessee Power & Light Co	16,066		

75 That at the present time the ratio of the interstate electric energy handled by each of the foregoing electric utility companies to the aggregate amount of electric energy handled by it is substantially the same as, or in excess of, such ratio during the year 1933, as hereinabove alleged.

2. That each of the gas utility companies included within the Electric Bond and Share System is engaged in the business of manufacturing or extracting gas and delivering and distributing such gas for sale. That a large amount of the natural and manufactured gas extracted or manufactured by the gas utility companies in the system is transmitted in interstate commerce from the state in which it is extracted or manufactured to the states in which it is distributed and consumed. That many of the gas utility companies in the system own or lease and operate utility assets for the transmission of or take part in the transmission of large amounts of natural and manufactured gas in interstate commerce. That the following companies in the Electric Bond and Share System transmit or take part in the transmission of natural and manufactured gas in interstate commerce:

A. Electric Power & Light System.—That defendant United Gas Corporation, a member of the Electric Power & Light System, through its subsidiary, the defendant United Gas Public Service Company, more specifically described in paragraph XII hereof, owns and operates an interconnected interstate system of pipe-lines which are used in the transmission of a substantial amount of natural and manufactured gas in interstate commerce through the states of Florida, Alabama, Mississippi, Louisiana, and Texas. That in addition, the following subsidiaries of United Gas Corporation, more specifically described in paragraph XII hereof, own and operate utility assets for the transmission of and transmit or take part in the transmission of substantial amounts of manufactured or natural gas in interstate commerce:

(1) Mississippi River Fuel Corporation, which owns and operates an interstate pipe-line carrying large quantities of natural gas in interstate commerce from fields in Louisiana to Missouri.

(2) El Paso Natural Gas Company, which owns and operates an interstate interconnected system of pipe-lines used in the trans-
76 mission of a substantial amount of natural and manufactured gas in interstate commerce from New Mexico into Texas, Arizona, and the Republic of Mexico.

(3) Consolidated Gas Utilities Company, which owns and operates an interconnected system of pipe-lines used in the transmission of a substantial amount of natural and manufactured gas in interstate commerce from Texas into Oklahoma and Kansas.

B. American Power & Light System.—That the following subsidiary gas utility companies of the American Power & Light Company, which are more specifically described in paragraph X hereof, own and operate utility assets for the transmission of natural or manufactured gas in interstate commerce, and transmit or take part

in the transmission of substantial amounts of natural or manufactured gas in interstate commerce:

(1) Portland Gas and Coke Company, which transmits substantial amounts of gas, natural or manufactured, in interstate commerce from Oregon to Washington.

(2) Superior Water, Light and Power Company, which transmits substantial amounts of gas, natural or manufactured, from Minnesota to Wisconsin.

(3) Central Arizona Light and Power Company, which receives and distributes in Arizona substantial amounts of natural gas produced in New Mexico.

XVI

1. That defendant Electric Bond and Share Company organized the defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, and American Gas and Electric Company for the purpose and with the intention of employing said corporations as its corporate instrumentalities for the acquisition, financing, and control of public utility companies; that at the time of the organization of the aforesaid defendant corporations, defendant Electric Bond and Share Company acquired by subscription and purchase or in exchange for property, voting securities of said corporations in an amount sufficient to enable it to dominate and control the affairs of said corporations, and has ever since retained voting securities in an amount sufficient to insure such
77 domination and control. That defendant Electric Bond and Share Company has in fact at all times completely dominated and controlled all the corporate activities of said defendants. That defendant Electric Bond and Share Company caused its own directors and executive officers to be elected directors and officers of each of said defendants, with the exception of American Gas and Electric Company, at the time of its organization, and that this substantial identity of directors and executive officers continued until after the passage of the Public Utility Holding Company Act of 1935; that shortly after the passage of the Act, defendant Electric Bond and Share Company caused the then officers and directors of said defendants, with the exception of American Gas and Electric Company, to resign and elected other executive officers of the Electric Bond and Share Company System in their stead, so as to terminate the substantial identity of directors and executive officers previously existing, but so as to continue in control of said defendants, a management completely subject to the domination and control of the defendant Electric Bond and Share Company. That the officers and directors of all of said defendant companies, including American Gas and Electric Company, have at all times been and now are persons designated by Electric Bond and Share Company, and who, by virtue of their relations with Electric Bond and Share Company, are subject to its direction and control.

2. That some time subsequent to the organization of the defendants American Power & Light Company, Electric Power & Light Corporation and National Power & Light Company, defendant Electric Bond and Share Company prepared and adopted a standard form of service contract, hereinafter more particularly described, and through the exercise of its control over said defendants, caused them to enter into such cotracts with it. Pursuant to said contracts, defendant Electric Bond and Share Company undertook to perform and did perform for said defendants substantially all the activities necessary to the conduct of their corporate business and functions. That some time subsequent to the passage of the Act, defendant Electric Bond and Share Company caused to be organized Ebasco Services Incorporated, all of the outstanding capital stock of which is owned and held by Electric Bond and Share Company. That Electric Bond and Share Company thereupon assigned to
78 Ebasco Services Incorporated all of its right, title and interest in the service contracts hereinabove referred to. That subsequent to the date of such assignments, Electric Bond and Share Company, acting through Ebasco Services Incorporated, has continued to perform all of the services which it undertook to perform in said service contracts.

3. That the defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, and American Gas and Electric Company own all or substantially all of the voting securities of public utility operating companies and of holding companies which in turn own all or substantially all of the outstanding voting securities of public utility operating companies, all as more specifically alleged in paragraphs IX, X, XI, XII, and XIII hereof. That the securities so owned by said defendants were either transferred to them by Electric Bond and Share Company or were purchased by them at the instance of the Electric Bond and Share Company. That said defendants perform no functions with respect to the public utility and holding companies thus owned, except to serve as mediums through which defendant Electric Bond and Share Company may publicly finance the operations of the subsidiary public utility companies of the Electric Bond and Share System, and through which defendant Electric Bond and Share Company, with a comparatively small investment of its own, may dominate and control the operations of these subsidiary public utility companies. That since their organization by it, defendant Electric Bond and Share Company has effectively used said defendants as instrumentalities for completely dominating and controlling the operations of the public utility companies of the system. That as a consequence of this domination and control, all important questions of business policy and personnel arising in the operations of the public utility companies of the Electric Bond and Share System are determined by defendant Electric Bond and Share Company,

and all of these subsidiary public utility companies are controlled and operated as component members of a single system.

4. That defendant Electric Bond and Share Company has also for many years controlled and directed, and now continues to
79 control and direct the operations of the subsidiary public utility companies of the system, other than subsidiaries of American Gas and Electric Company, by means of supervisory services rendered to these subsidiary public utility companies; that defendant Electric Bond and Share Company has adopted a standard form of service contract for public utility companies, hereinafter more particularly set forth, covering all important aspects of the operations of its subsidiary public utility companies; that it has caused all or substantially all of its subsidiary public utility companies in the United States, other than subsidiaries of American Gas and Electric Company, to negotiate and enter into such service contracts, in accordance with which defendant Electric Bond and Share Company has maintained an elaborate service organization through which it has in fact regularly and continuously performed all the services set forth in the standard service contract, and other services as well, for these public utility companies. That subsequent to the passage of the Public Utility Holding Company Act of 1935 and the organization of Ebasco Services Incorporated, as hereinabove alleged, Electric Bond and Share Company assigned to Ebasco Services Incorporated its service contracts with said subsidiary public utility companies. That either in its own name or through Ebasco Services, Incorporated, defendant Electric Bond and Share Company now continues and will continue, to perform all the services set forth in the standard form of service contract and many other services for all or substantially all of its subsidiary public utility companies in the United States, other than subsidiaries of American Gas and Electric Company, and continues and will continue thus to supervise, direct, and control in all important aspects, the operations of these subsidiary public utility companies.

5. That defendant Electric Bond and Share Company, by means of its voting control, its supervisory services, and other means, as hereinabove set forth, has controlled, supervised, and directed the business and affairs of its subsidiary public utility companies which are engaged in the interstate transmission of electric energy, and natural and manufactured gas, as hereinabove alleged; that defendant Electric Bond and Share Company has caused its subsidiary holding companies to purchase controlling interests in public utility companies in part for the purpose of facilitating and develop-
80 ing the interstate transmission of natural and manufactured gas and electric energy; that defendant Electric Bond and Share Company has constructed or caused its subsidiary utility companies to construct utility properties for the interstate transmission of gas and electric energy, has caused the purchase and construction of utility properties for the generation of electric energy and the

development of natural and manufactured gas to be transmitted in interstate commerce and has caused and facilitated the development of interconnections between utility properties for the interstate transmission of gas and electric energy; and that by reason of these activities, defendant Electric Bond and Share Company, both in its own corporate capacity and through the corporate organizations of the other holding companies named defendants herein, is engaged and will continue to be engaged in the transmission in interstate commerce of electric energy and manufactured and natural gas.

6. That defendant American Gas and Electric Company actively dominates and controls its subsidiary public utility companies through its ownership of substantially all of their voting securities and through other means hereinafter set forth; that defendant American Gas and Electric Company maintains a service organization through which it renders to all or substantially all of its subsidiary public utility companies, supervisory services covering all important aspects of their business operations; that defendant American Gas and Electric Company in rendering these services supervises, directs, and controls the business, affairs, and operations of its subsidiary public utility companies which are engaged in the transmission of electric energy in interstate commerce, as hereinabove alleged; that by virtue of these activities, defendant American Gas and Electric Company is itself actively engaged and will continue to be actively engaged in the interstate transmission of electric energy.

7. That defendants, Power Securities Corporation, Idaho Power Company, Utah Power and Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power and Light Company, and Lehigh Power Securities Corporation, are engaged in the interstate transmission of electric energy or natural or manu-
81 factured gas, either themselves or through the instrumentality of public utility companies all or substantially all of whose voting securities are owned by said defendants.

XVII

That the defendant Electric Bond and Share Company, in the ordinary course of its business, by constant use of the mails or means or instrumentalities of interstate commerce, is or will be continuously engaged, either in its own name or through the instrumentality of Ebasco Services, Incorporated, in the performance of the existing service contracts with American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company. That in said contracts defendant Electric Bond and Share Company, in its own name or through Ebasco Services, Incorporated, for an agreed rate of compensation, based on the gross earnings of the supervised holding company and its subsidiaries, undertakes to furnish and the supervised holding company agrees to accept and pay

for full and complete services of a management, financial, auditing, engineering, and secretarial nature. That more specifically such contracts provide:

(1) As to Executive Officers.—That the Electric Bond and Share Company will lend the assistance of its executive officers to aid in the development of general policies and the solution of major problems arising in connection with the affairs and management of the supervised holding company.

(2) As to Officers and Directors.—That the Electric Bond and Share Company will make available its executives and other members of its organization for service as directors and officers of the supervised holding company.

(3) As to Office Accommodation and Staff.—That the Electric Bond and Share Company will provide office accommodation and staff personnel in New York for the transaction of business for the supervised holding company.

(4) As to Sponsors.—That the members of the staff of Electric Bond and Share Company will serve as sponsors, sponsor engineers, and sponsor accountants for the operating subsidiaries of the supervised holding company, and will be available for consultation, advice, and assistance in the interest of the systematic development and operation of the supervised holding company's system as a whole.

82 (5) As to Capital and Corporate Matters.—That the Electric Bond and Share Company will assist in the drafting, printing, creation, issuance, listing, delivery, registration, transferring, and retirement of the securities of the supervised holding company, and assist in other important corporate actions.

(6) As to Secretarial Service.—That the Electric Bond and Share Company will direct, to the extent desired or required, the calling of stockholders, directors, and committee meetings of the supervised holding company, will compile information and programs of action for such meetings, cooperate in the drafting of resolutions, and that the members of the Electric Bond and Share Company who are officers of the supervised holding company will maintain records of and make notifications of actions taken at such meetings.

(7) As to Tax Services.—That the Electric Bond and Share Company will advise as to accounting for Federal taxation; will handle the preparation and filing of tax returns and supporting schedules; will assist in presenting claims for refunds, abatements, and adjustments of taxes; will assist in cooperation with paying agents in accounting and reporting interest payments; will keep informed as to tax law; and will assist in the preparation and filing of state and local tax returns.

(8) As to Financial Service.—That the Electric Bond and Share Company will advise upon permanent financing, will aid in obtaining temporary financing and will arrange for the employment of temporary surplus cash.

(9) As to Funds and Securities.—That the officers of Electric Bond and Share Company, who are also officers of the supervised holding company, will attend to the receipt and disbursement of funds, in connection with which Electric Bond and Share Company will procure lists of stockholders, do all the clerical work incident to the preparation and mailing of dividend checks, and arrange for the filing of government reports; and that Electric Bond and Share Company will provide safety deposit facilities for such securities as are kept in New York and will transmit and deliver them as directed.

(10) As to Accounting and Analysis.—That the Electric Bond and Share Company will do all bookkeeping, accounting, and
83 auditing work for the supervised holding company, except annual or special audits which are made by outside auditors; and that Electric Bond and Share Company will do all work incident to vouchering for payment of and pay invoices, reconcile bank accounts, furnish the supervised holding company with monthly statements thereof, and prepare analyses of accounts for the officers of the supervised holding company.

(11) As to Statistics and Reports.—That Electric Bond and Share Company will draft and submit to the supervised holding company reports to be sent to stockholders, interested bankers, and financial publications; and will submit to the supervised holding company reports of interest concerning other public utility companies.

(12) As to Security Listings.—That Electric Bond and Share Company will prepare appropriate applications for the listing of securities on stock exchanges and will prepare periodical financial statements in connection therewith, and will assist in any hearings required by stock exchange officers.

(13) As to Subsidiary Holding Companies.—That Electric Bond and Share Company when requested by the supervised holding company will perform the same supervision and general services as hereinabove set forth for any of the subsidiary holding companies of the supervised holding company.

(14) As to Security Sales.—That Electric Bond and Share Company, for an additional compensation based upon the amount of securities sold, will, except when otherwise directed, take charge of the sale at wholesale of securities for the supervised holding company and its holding company subsidiaries; supervise the preparation of mortgages, indentures, and trust agreements; prepare and distribute statements for the information of interested public authorities, bankers, and investors; be prepared to answer legitimate questions from investing interests; and will endeavor to maintain a favorable consideration by the investing public of the securities of the supervised holding company and its subsidiary holding companies.

(15) That Electric Bond and Share for an additional compensation based upon the amount of securities sold will direct sales of such stock of the supervised holding companies and of its

84 subsidiary holding companies as they wish to sell to the consumers in the territory served by operating subsidiaries.

(16) That Electric Bond and Share Company will aid in the preparation of special reports required by state public utilities commissions and "blue sky" laws and for the qualification of securities as legal investments for savings banks, trustees, and other regulated financial institutions.

(17) As to Acquisition and Exchange of Properties.—That Electric Bond and Share Company for an additional compensation will provide expert engineers, statisticians, auditors, accountants, and rate and corporate specialists to aid in the acquisition of new properties and companies, and aid in the sale or exchange of properties.

(18) That for a compensation to be agreed upon, Electric Bond and Share Company to the best of its ability will carry out any request for services not contemplated by the contract.

XVIII

That the defendant Electric Bond and Share Company, in the ordinary course of its business, by constant use of the mails or means or instrumentalities of interstate commerce, in its own name or through Ebasco Services, Incorporated, is and will be continuously engaged in taking steps in the performance of its existing service contracts with the utility companies in the Electric Bond and Share System. That in such contracts, defendant Electric Bond and Share Company, in its own name or through Ebasco Services, Incorporated, for an agreed rate of compensation based upon total monthly operating revenues, undertakes to render extensive services, and the operating public utility agrees to accept such services and to pay for the same. That more specifically such contracts provide:

1. As to Executive Officers.—That Electric Bond and Share Company will lend the assistance of its executive officers to aid in the development of general policies and the solution of major problems arising in connection with the operation and management of the supervised operating company.

2. As to Supplying of Officers and Directors.—That Electric Bond and Share Company will make available its execu-
85 tives and other members of its organization for service as directors and officers of the supervised operating company.

3. As to Sponsors.—That Electric Bond and Share Company will provide one or more of its operating specialists to serve as sponsor for the supervised operating company, which sponsor will visit the properties as frequently as may be necessary for a comprehensive knowledge of the situation and local problems of the operating company; that one of the senior engineers of Electric Bond and Share Company will serve as sponsor engineer for the supervised operating company in which capacity he will visit its properties from time to

time; that one of the senior accountants of Electric Bond and Share Company will serve as sponsor accountant for the operating company in which capacity he will maintain contact therewith through correspondence or by visits.

4. As to Capital and Corporate Matters.—That Electric Bond and Share Company will assist in the drafting, printing, creation, issuance, listing, delivery, registration, transferring, and retirement of the securities of the supervised operating company; that Electric Bond and Share Company will advise with the officers and counsel of the supervised operating company in administration of legal work.

5. As to Secretarial Service—Corporate Meetings.—That Electric Bond and Share Company will direct, to the extent desired, the calling, notification, and recording of stockholders, directors, and committee meetings of the supervised operating company; that the Electric Bond and Share Company will assist in the compilation of information, preparation of programs of action, and drafting of appropriate resolutions for such meetings; that upon request, a sponsor or other representative of Electric Bond and Share Company will attend such meetings to give information and advice on the business and affairs of the supervised operating company.

6. As to Tax Services.—That the defendant Electric Bond and Share Company will advise as to accounting for Federal taxation; will handle the preparation and filing of tax returns and supporting schedules; will assist in presenting claims for refunds, abatements, and adjustments of taxes, will assist in cooperation with paying agents of the supervised company in accounting and reporting
86 interest payments; will keep informed as to tax law, and will assist in the preparation and filing of state and local tax returns.

7. As to Construction Programs, Budgets, Forecasts.—That the Electric Bond and Share Company will advise and assist in formulating a development, construction program, coordinating of current extensions with such program, and preparing annual construction budgets; that in connection with such budgets the Electric Bond and Share Company will estimate costs and make recommendations as to necessity and time for contemplated construction; that Electric Bond and Share Company will assist and advise in the preparation of operating budgets and forecasts, covering revenues and expenditures.

8. As to Financial Services.—That Electric Bond and Share Company will advise upon permanent financing, will aid in obtaining temporary financing, and will arrange for the employment of temporary surplus cash.

9. As to Receipt, Disbursement, and Care of Funds.—That the officers of Electric Bond and Share Company who are also officers of the supervised operating company will attend to the receipt and disbursement of such funds of the supervised operating company as are receivable at or disbursed from New York, and in connection

therewith Electric Bond and Share Company will procure lists of stockholders, do all the clerical work incident to the preparation and mailing of dividend checks, and arrange for the filing of government reports; and that Electric Bond and Share Company will provide safety deposit facilities for such securities as are kept in New York and will transmit and deliver them as directed.

10. As to Accounting and Analyses.—That Electric Bond and Share Company will do all work incident to vouchering for payment, and will pay such invoices as the supervised operating company desires paid from New York, reconcile New York bank accounts, furnish monthly statements thereof, and prepare analyses of accounts for the officers of the supervised operating company; that the accounting specialists of Electric Bond and Share Company will be available in New York for consultation on all accounting matters, including merchandising and jobbing accounting, utilization of mechanical accounting, office devices, and uniform classification of materials and supplies and control thereof.

87 11. As to Statistics and Reports.—That Electric Bond and Share Company will advise and assist in the preparation of reports to be sent to stockholders, interested bankers, and financial publications, and will furnish upon request reports of interest concerning other public utility companies.

12. As to Stock Exchange Listings.—That Electric Bond and Share Company will assist in the preparation of and arrange for the presentation of applications for the listing of securities, will assist in the preparation of periodical financial statements in connection therewith, and will, when requested, attend and assist in any hearings required by stock exchange officers.

13. As to Public Relations.—That Electric Bond and Share Company will advise and collaborate with the officers of the supervised operating company on questions of business policy, and customer, employee, and public relations; that Electric Bond and Share Company will furnish digests of state and federal regulations and laws, and economic, trade, and technical literature, pertaining to the problems of the supervised operating company.

14. As to Personnel.—That, when agreeable to all parties interested, Electric Bond and Share Company will make recommendations for the transfer of personally observed, qualified men, from one operating company to another, and that Electric Bond and Share Company will assist in obtaining needed personnel.

15. As to Territorial Development.—That Electric Bond and Share Company will advise and assist in the industrial development of the territory served by the supervised operating company, the extension of services into new territory, and acquisitions of new properties.

16. As to New Business, Merchandising, and Jobbing.—That Electric Bond and Share Company will assist in the development of new business, merchandising, and jobbing departments, will plan and assist in installing of modern equipment and system of report forms

for solicitation of new business, will supply data on the requirements of any class of business and on the cost of competitive services, will keep in touch with, and inform the supervised company of manufacturing developments in appliances, and will assist in campaigns for special merchandising activities on particular classes of appliances.

88 17. As to Rates.—That rate specialists of Electric Bond and Share Company will be available in New York and will visit the property of the supervised operating company from time to time for consultation on rate problems, that Electric Bond and Share Company will inform the supervised operating company of public utility rates in force throughout the country, of developments in the theory and practice of rate-making, and of rate rulings and decisions, and that Electric Bond and Share Company will counsel and advise in the preparation and presentation of information, studies, and exhibits required for regulating authorities.

18. As to Consulting Engineering.—That the engineering staff of Electric Bond and Share Company comprises engineering specialists of diversified and extensive experience in technical public utility problems, together with a comprehensive auxiliary organization; that Electric Bond and Share Company keeps informed of public utility engineering developments, making investigations, and conducting research in connection therewith; that Electric Bond and Share Company maintains contact with United States and foreign public utility operations, the activities of technical societies, and with manufacturers of apparatus and equipment; that this organization will be available in New York for consultation on operation, extensions and development plans; that Electric Bond and Share Company will advise on the cost estimates, designs, and plans of the supervised operating company, will assist in the application to the properties of the holding company of standard designs, types of construction, and methods of operation developed by Electric Bond and Share Company, and will supervise the installation and maintenance of technical and cost records pertaining to properties and operation.

19. As to Purchasing.—That Electric Bond and Share Company will negotiate volume contracts with manufacturers providing for quantity discounts on purchases of public utility supplies, and equipment, including lamps, motors, transformers, meters, electric and gas appliances, lubricating and insulating oils, electric railway supplies, automobiles, trucks, and office equipment; that Electric Bond and Share Company, upon request, will so far as possible, include the supply requirements of the operating company in orders

89 under those volume contracts; that Electric Bond and Share Company will assist in arranging specific purchases, and in general serve as New York purchasing agent; that Electric Bond and Share Company maintains an information service, and will make available information on current market data, and other information and data likely to be of assistance.

20. As to Apparatus Exchange.—That for the benefit of all companies similarly served, the Electric Bond and Share Company conducts an apparatus exchange.

21. As to Traffic.—That Electric Bond and Share Company, when requested, will route and classify shipments, furnish information on routing, classification, insurance in transit, and procedure in filing claims, and checking and auditing of transportation invoices, and will assist in locating and expediting strayed and delayed shipments insofar as this can be done in New York.

22. As to Factory Information.—That Electric Bond and Share Company, when requested, will advise on the status of factory production, and when necessary, on changes in orders for the improvement of deliveries or other advantages.

23. As to Insurance.—That Electric Bond and Share Company will assist in making investigations, reports, and proper classifications and reclassifications of insurable property and in preparation of policy forms; that, when requested, Electric Bond and Share Company will negotiate or assist in negotiating insurance for all risks so as to give the supervised operating company the benefit of advantageous terms obtainable because of the aggregate volume of insurance handled by Electric Bond and Share Company.

24. As to Sale and Marketing of Securities.—That Electric Bond and Share Company, for an additional compensation based upon the amount of securities sold, will, except when otherwise directed, charge of the sale at wholesale of the securities of the supervised operating company and its controlled companies; will supervise the preparation of mortgages, indentures, and trust agreements, and prepare and distribute statements for the information of interested public authorities, bankers, and investors; will be prepared to answer legitimate questions from investment interests; and will endeavor to maintain a favorable consideration by the investing public of the securities of the supervised operating company and its controlled companies.

90 25. That Electric Bond and Share Company, for an additional compensation, will direct sales of such stock of the supervised operating company and its controlled companies as they wish to sell to the consumers in the territory served by the companies.

26. That Electric Bond and Share Company will aid in the preparation of special reports required by state public utility commissions and "blue sky" laws and for the qualification of securities as legal investments for saving banks, trustees, and other regulated financial institutions.

27. As to Engineering Services.—That Electric Bond and Share Company, for an additional agreed rate of compensation, will, when requested, render special engineering services such as the following: investigations and studies for plans of development; efficiency studies; detailed engineering assistance in interconnecting properties of the supervised company with properties of other companies, purchas-

ing power and gas, and in selling services to other utility companies and large consumers; appraisals of property; and inspection and tests of purchases.

28. As to Engineering for Construction.—That Electric Bond and Share Company, for an additional agreed rate of compensation, will, upon request, do all engineering required in connection with construction or reconstruction work done by one of the associated construction companies of Electric Bond and Share Company, or by a general contractor under the supervision of such associated construction company.

29. As to Construction.—That Electric Bond and Share Company, when requested, will arrange for a construction contract between the supervised operating company and one of the associated construction companies of Electric Bond and Share Company, under which the construction company, for an agreed rate of compensation based on percentages of cost, will take charge of construction or reconstruction work.

30. As to Construction Supervision.—That Electric Bond and Share Company, when requested, will arrange for a construction supervision contract between the supervised operating company and one of the associated construction companies of Electric Bond and Share Company under which the construction company, for an agreed rate of compensation based on percentages of construction cost,
91 will supervise construction work to be done by a general contractor.

31. As to Special Investigations and Reports.—That Electric Bond and Share Company for an additional agreed rate of compensation will upon request provide the services of various experts for reports upon new properties, investigations for the industrial development of the territory served, detailed rate studies, detailed new business investigations, and special investigations of important projects and unusual problems, and that Electric Bond and Share Company will supplement such reports with analyses, comments and recommendations.

XIX

That Electric Bond and Share Company by virtue of its domination and control over the subsidiary operating companies in the Electric Bond and Share System, and pursuant to the service contracts described in paragraph XVIII hereof, in fact controls and directs the purchasing of, and through the instrumentality of Ebasco Services, Incorporated, purchases, all or substantially all of the materials, supplies, and equipment required by said subsidiary operating companies with the exception of the subsidiary operating companies of the American Gas and Electric Company; that defendant Electric Bond and Share Company, or Ebasco Services, Incorporated, is a party to written or oral contracts, agreements or understandings with

one or more independent manufacturing companies under which Electric Bond and Share Company or Ebasco Services, Incorporated, undertakes to place with such companies orders for all or substantially all of the materials, supplies, and equipment that may be required by the subsidiary operating companies which are parties to the service contract described in paragraph XVII hereof; that in the continual performance of such agreements or understandings, Electric Bond and Share Company, in its own name or through the instrumentality of Ebasco Services, Incorporated, purchases annually for the account of such subsidiary operating companies materials, supplies and equipment valued at more than $50,000,000.00 and causes and will cause substantially all of such materials, supplies, and equipment to be shipped in interstate commerce from the factory or warehouse of the seller to the purchasing subsidiary operating company.

92 XX

That Electric Bond and Share Company, since the passage of the Holding Company Act, caused to be transferred all or substantially all the capital stock of its wholly owned subsidiary, Phoenix Engineering Corporation, to Ebasco Services, Incorporated; that defendant Electric Bond and Share Company, through the Phoenix Engineering Corporation, in accord with the arrangement contemplated by the standard form contract for operating public utility companies as hereinabove set forth, in the ordinary course of its business, by use of the mails or means or instrumentalities of interstate commerce, regularly negotiates and enters into construction contracts with operating public utility companies of the Electric Bond and Share Group; and that in such construction contracts, Phoenix Engineering Corporation, for an agreed rate of compensation based upon percentages of cost, undertakes to complete specified construction and reconstruction work, and in connection therewith undertakes to purchase, for the account of the operating company, all necessary materials and equipment, to procure necessary insurance, to keep account of costs and render monthly statements thereof, and upon request to make tests of completed work, and for a trial period conduct operation thereof; that in the performance of these contracts Phoenix Engineering Corporation purchases large quantities of materials and equipment for the account of the operating company, and causes the shipment of said large quantities of materials and equipment across state lines from the place of business of the seller to that of the operating company; that the defendant Electric Bond and Share Company, through the Phoenix Engineering Corporation, in the ordinary course of its business, by constant use of the mails and the means and instrumentalities of interstate commerce, is continually engaged and will be continuously engaged in taking steps in the performance of such construction contracts.

XXI

1. That defendant Electric Bond and Share Company, in the ordinary course of its business by frequent use of the mails and the means and instrumentalities of interstate commerce, has engaged in
93 the performance of financial services for defendant American Gas and Electric Company, and for the holding companies and utility companies in the American Gas and Electric System, including the sale at wholesale and retail of securities of such companies, which securities were caused by Electric Bond and Share Company to be offered for sale and widely distributed and sold in interstate commerce; that defendant Electric Bond and Share Company, or its wholly owned subsidiary, Ebasco Services, Incorporated, or both, in the normal course of business, and by use of the mails and the means and instrumentalities of interstate commerce, are taking and will continue to take steps in the performance of such financial services.

XXII

That defendant American Gas and Electric Company, in the ordinary course of its business by constant use of the mails and the means and instrumentalities of interstate commerce, is continuously engaged and will continue to engage in taking steps in the performance of a complete range of supervision and management services for its subsidiary holding companies and operating public utility companies, including financial, accounting, auditing, commercial, purchasing, valuation, engineering, insurance, statistical, and other services.

That the defendant American Gas & Electric Company has established and maintains at its offices in New York City nine or more service departments, employing approximately 300 persons, who are engaged in the performance of supervisory and management services for the holding companies and public utility companies in the American Gas & Electric System. That a substantial portion of the corporate expense of the defendant American Gas & Electric Company is incurred in the maintenance and operation of its servicing departments. That in consideration of an agreed rate of compensation paid to it, the American Gas & Electric Company, through its servicing departments, performs the following services for the holding companies and public utility companies in the American Gas and Electric System:

1. Executive Offices.—Supplies a complete staff of corporate officers to each of the subsidiary companies. Such corporate officers
94 are chosen from among the officers and directors of the defendant American Gas & Electric Company.

2. Legal Staff.—Cooperates with the officers and attorneys of the subsidiary companies in examining all laws relating to the business of such companies; prepares and records mortgages, negotiates and

prepares contracts, examines and prepares deeds, prepares applications for the qualification of securities and applications to and protests before regulatory bodies and tax commissions, and furnishes legal representation upon other legal problems of the subsidiary companies.

3. Purchasing Staff.—Purchases substantially all materials, supplies, and equipment for the subsidiary companies, relieving these companies of all details after they have requisitioned their needs to this department.

4. Auditing and Accounting Department.—Checks and audits the journal entries, general accounts, consumers' accounts receivable, inventory, freight bills, and classifications of the subsidiary companies.

5. Security Department.—Prepares and mails all dividend checks of the subsidiary companies, keeps the records of the stockholders of these companies by daily posting stock transfers, prepares new issues of bonds for execution and delivery, and arranges for the payment and cremation of coupons.

6. Tax Department.—Prepares for the subsidiary companies all reports for tax and regulatory commissions, including Federal income tax reports, and represents the subsidiary companies on all contested tax matters.

7. Insurance Department.—Inspects the property of the subsidiary companies to determine its valuation, negotiates for and places insurance coverage on this property and handles the preparation and presentation of all claims. Also coordinates plans for accident prevention among the subsidiary companies.

8. Commercial Department.—Prepares for the subsidiary companies' rate structures, organizes and directs the solicitation of all new business, advertising, demonstrations, and the conduct of sales schools for the employees of the subsidiary companies.

9. Engineering Department.—Makes surveys of the operating conditions of the subsidiary companies, including efficiency of
95 combustion, cost of labor and transmission, inter-connections and relay systems, and serves as instructors of the operating personnel of the subsidiary companies.

10. Other departments whose duty it is to keep statistical and other records for the common use of the subsidiary companies in order to facilitate an interchange of equipment and of experience in methods of operation.

XXIII

That defendant Electric Bond and Share Company, in performing its obligations under the service, sales, and construction contracts described in paragraphs XVII and XVIII hereof, either in its own name or through its wholly owned subsidiaries, Ebasco Services, Incorporated, and Phoenix Engineering Corporation, since December 1, 1935, has engaged and will continue to engage in a business in interstate commerce within the meaning of Section 4 (a) (5) of the

Act. That these contracts contemplate, and their performance requires and depends upon, continuous and regular intercourse in interstate commerce and frequent transportation in interstate commerce of information in the form of books, periodicals, apparatus, papers, pamphlets, reports, and forms between offices of the Electric Bond and Share Company in New York City and the client subsidiary companies in 32 states other than the State of New York. That in these contracts defendant Electric Bond and Share Company undertakes to and does send, as frequently as may be necessary, from its principal offices in New York to the companies served, sponsors, operating specialists, and engineers to confer, advise, and assist with respect to the problems of the operating companies, and that this obligation contemplates and its performance necessitates transportation in interstate commerce. That the accounting, financial, legal, and other services performed pursuant to said contracts from the offices of Electric Bond and Share Company in New York City by its officers and employees in said city to the client companies in other states contemplate and depend for their accomplishment upon, and are performed by means of, interstate communication and interstate commerce. That in accordance with the provisions of the contracts with its client subsidiary companies, defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, In-
96 corporated, negotiates contracts and itself enters into contracts for the sale of equipment and supplies to the client companies, which contracts contemplate, and the performance of which requires and depends upon, and which are performed by means of, transportation in interstate commerce. That in accordance with the provisions of its contracts with client subsidiary companies, defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, supervises the transportation in interstate commerce of equipment and supplies to client companies. That in accordance with the terms of contracts between itself and client subsidiary companies, defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, conducts an apparatus exchange for the purchase, sale, and exchange of second-hand apparatus and materials among client companies and between client companies and other companies, and that the conduct of such apparatus exchange contemplates, and requires shipments of apparatus and materials in interstate commerce. That defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiary, Ebasco Services, Incorporated, in accordance with the terms of its contracts with client subsidiary companies, as their business needs require, negotiates and takes charge of the sale and distribution in interstate commerce of the securities of client companies and directs from its New York offices, through the channels of interstate commerce, the sale of the

securities of client companies to their customers in the territories which they serve. That defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiaries, Ebasco Services, Incorporated, or Phoenix Engineering Corporation, regularly purchases and ships materials, supplies, and equipment in interstate commerce as contemplated in, and required by, the construction contracts negotiated and entered into as hereinabove set forth. That defendant Electric Bond and Share Company, either in its own name or through its wholly owned subsidiaries, Ebasco Services, Incorporated, and Phoenix Engineering Corporation, receives compensation from its client subsidiary companies for the performance of the services described in this paragraph, in accordance with the terms of the standard contract as hereinabove set forth. That the compensation so received constitutes a substantial part of the earnings of defendant Electric Bond and Share Company. That the performance for compensation of the services described in this paragraph constitutes a business in interstate commerce, and that defendant Electric Bond and Share Company, both in its own name and through its wholly owned subsidiaries Ebasco Services, Incorporated, and Phoenix Engineering Corporation, although not registered under the Act, will continue to engage in such business in interstate commerce in violation of Section 4 (a) (5) of the Act.

97

XXIV

That defendant American Gas and Electric Company, in the ordinary course of its business, is regularly engaged in rendering supervision, management, and construction services for its subsidiaries, as hereinabove alleged, and that the performance of such services requires and causes regular and continuous intercourse in interstate commerce and transportation in interstate commerce of apparatus, materials, supplies, securities, books, pamphlets, periodicals, reports, papers, and forms. That the performance of these services by defendant American Gas and Electric Company constitutes engaging in business in interstate commerce, and that the defendant American Gas and Electric Company, although not registered under the Act, is engaging and will continue to engage in such business in interstate commerce in violation of section 4 (a) (5) of the Act.

XXV

Wherefore, pursuant to the provisions of section 18 (f) and (g) of Title I of the Public Utility Holding Company Act of 1935, the plaintiff respectfully prays:

1. That each of the defendants be required to answer this amended and supplemental bill of complaint.

2. That each and all of the defendants, by appropriate order of this court, be enjoined from violating any of the provisions of Section

4 (a) of the Act, and be required to register pursuant to the provisions of Section 5 of said Act.

98 3. For such other and further relief as the court may deem appropriate in the premises.

———— ————,
General Counsel, Securities and Exchange Commission.

————,
Special Counsel,
Solicitors for the Plaintiff.

Office and Post Office Address Room 1024, Securities and Exchange Commission, Washington, D. C., or 120 Broadway, New York City.

Exhibit A

Rule 3 A–2

Acting pursuant to authority conferred upon it by the Public Utility Holding Company Act of 1935, particularly section 3 (a) thereof, and finding that the exemption provided by the following Rule is not detrimental to the public interest or the interest of investors or consumers, the Securities and Exchange Commission hereby adopts the following Rule:

RULE 3 A–2. Temporary exemption of holding companies: (a) Subject to the time limitations specified in paragraph (b) of this Rule, any holding company shall be exempt from any obligation, duty or liability imposed by the Act upon such company as a holding company, if—

(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominately intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

(2) such holding company is predominately a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;

(3) such holding company is only incidentally a holding company, being primarily engaged or interested in one or more busi-

99 nesses other than the business of a public-utility company and

(A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company;

(4) such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities; or

(5) such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.

(b) The exemptions provided by this rule shall continue until and including February 2, 1936, except that the exemption provided by sub-paragraph (a) (1) hereof shall continue until termination thereof by the Commission, either by amendment or repeal of this Rule.

Exhibit H to affidavit

Cases filed against members of the Securities and Exchange Commission and other officers of the United States

Name of plaintiff	Court in which filed	Date of filing bill of complaint
The United Gas Improvement Company	U. S. District Court for the Eastern District of Pennsylvania.	Nov. 20, 1935
Philadelphia Electric Company	U. S. District Court for the Eastern District of Pennsylvania.	Nov. 21, 1935
The North American Company	Supreme Court of the District of Columbia.	Nov. 26, 1935
Consolidated Gas Company of New York Central Union Gas Company New Amsterdam Gas Company The New York Edison Company, Inc. Brooklyn Edison Company, Inc.	U. S. District Court for the Southern District of New York.	Nov. 25, 1935
Delaware Electric Power Company	U. S. District Court for the District of Delaware.	Nov. 21, 1935
Susquehanna Utilities Company	U. S. District Court for the District of Delaware.	Nov. 21, 1935
The Commonwealth & Southern Corporation	U. S. District Court for the District of Delaware.	Nov. 23, 1935
American Water Works and Electric Company, Incorporated.	Supreme Court of the District of Columbia.	Nov. 27, 1935
Sierra Pacific Electric Company	U. S. District Court for the District of Maine-Southern Division.	Nov. 27, 1935
The United Corporation New York United Corporation	U. S. District Court for the Southern District of New York.	Nov. 27, 1935
Standard Gas and Electric Company	U. S. District Court for the District of Delaware.	Nov. 27, 193
The Western Public Service Company	U. S. District Court for the District of Maryland.	Nov. 27, 1935
Stone & Webster, Incorporated	U. S. District Court for the District of Delaware.	Nov. 26, 1935
Engineers Public Service Company	U. S. District Court for the District of Delaware.	Nov. 26, 1935
Stone & Webster Utilities Corporation	U. S. District Court for the District of Delaware.	Nov. 26, 1935
Eastern Texas Electric Company	U. S. District Court for the District of Delaware.	Nov. 26, 1935
El Paso Electric Company	U. S. District Court for the District of Delaware.	Nov. 26, 1935
The United Light and Power Company	Supreme Court of the District of Columbia.	Nov. 29, 1935
Continental Gas & Electric Corporation Iowa-Nebraska Light and Power Company	Supreme Court of the District of Columbia.	Nov. 29, 1935
American Light & Traction Company	Supreme Court of the District of Columbia.	Nov. 29, 1935
The United Light and Railways Company United American Company	Supreme Court of the District of Columbia.	Nov. 29, 1935
United States Electric Power Corporation	U. S. District Court for the District of Maryland.	Nov. 29, 1935
The West Penn Electric Company	U. S. District Court for the District of Maryland.	Nov. 29, 1935

Cases filed against members of the Securities and Exchange Commission and other officers of the United States—Continued

Name of plaintiff	Court in which filed	Date of filing bill of complaint
101 Associated Gas and Electric Company Associated Gas and Electric Corporation Associated Electric Company Pennsylvania Electric Corporation NY PA NJ Utilities Company General Gas & Electric Corporation Southeastern Electric & Gas Company Eastern Power Corporation Associated Utilities Corporation American Utilities Company	U. S. District Court for the District of Delaware.	Nov. 30, 1935
North American Light & Power Company	U. S. District Court for the District of Delaware.	Nov. 30, 1935
North American Edison Company	U. S. District Court for the District of Delaware.	Nov. 30, 1935
American Utilities Service Corporation	U. S. District Court for the Northern District of Illinois.	Nov. 30, 1935
The Tennessee Electric Power Company	Supreme Court of the District of Columbia.	Dec. 3, 1935
The United Corporation New York United Corporation	U. S. District Court for the District of Delaware.	Nov. 29, 1935
Cities Service Company et al Cities Service Power & Light Co Arkansas Natural Gas Corporation Ohio Utilities Finance Company The Lake Shore Power Company The Ohio Public Service Company The Toledo Edison Company Toledo Light & Power Company Public Service Company of Colorado	U. S. District Court for the District of Delaware.	Nov. 29, 1935
Cities Service Company Cities Service Power & Light Company Arkansas Natural Gas Company Ohio Utilities Finance Company Lakeshore Power Company Ohio Public Service Company Toldeo Edison Company Toledo Light & Power Company Public Service Company of Colorado	U. S. District Court for the Southern District of New York.	Nov. 29, 1935
Toledo Edison Company Ohio Public Service Company Lake Shore Power Company Ohio Utilities Finance Company Cities Service Company Service Power & Light Company Toledo Light and Power Company	U. S. District Court for the Northern District of Ohio—Western Division.	Nov. 29, 1935
Public Service Company of Colorado Cities Service Company Cities Service Power & Light Company	U. S. District Court for the District of Colorado.	Nov. 29, 1935
102 Standard Power & Light Corporation	U. S. District Court for the District of Delaware.	Nov. 27, 1935
Charles B. Barnes et al. (Eastern Utilities Association).	U. S. District Court for the District of Massachusetts.	Nov. 30, 1935
Federal Light & Traction Co., and Central Arkansas Public Service Corporation.	U. S. District Court for the Southern District of New York.	
East Tennessee Light & Power Cities Service Company Cities Service Power & Light Company	U. S. District Court for the Western District of Virginia.	Nov. 29, 1935
Northern States Power Co. et al. (22 plaintiffs in all).	U. S. District Court for the District of Minnesota.	
North Continent Utilities Corporation	U. S. District Court for the District of Delaware.	Nov. 29, 1935
American Gas & Power Company	U. S. District Court for the District of Delaware.	Nov. 27, 1935
Louisville Gas & Electric Company	U. S. District Court for the District of Delaware.	Nov. 27, 1935
Northeastern Water & Electric Corporation	U. S. District Court for the District of Delaware.	Dec. 4, 1935
H. M. Byllesby & Company	U. S. District Court for the District of Delaware.	Nov. 30, 1935
The Byllesby Corporation	U. S. District Court for the District of Delaware.	Nov. 30, 1935
The Columbus Railway, Power & Light Company.	U. S. District Court for the Southern District of Ohio—Eastern Division.	Nov. 30, 1935

Cases between private litigants

Title of case	Court in which filed	Date of filing bill of complaint
Albert E. Peirce, and Central Public Service Company, etc. *v.* Central Public Utility Corporation and Consolidated Gas Company.	U. S. District Court for the District of Delaware.	Dec. 4, 1935
National Public Utilities Corporation (Stockholders' Suit).	U. S. District Court for the District of Delaware.	
Public Utility Investing Corporation *v.* Utilities Power & Light Corp. et al.	U. S. District Court for the Southern District of New York.	Nov. 30, 1935
Theodore W. Case, etc. *v.* Columbia Gas & Electric Company.	U. S. District Court for the Southern District of New York.	Nov. 20, 1935
Burco, Inc. *v.* J. B. Whitworth and F. Donald Fenhagen, Trustees of the Estate of American States Public Service Company, The Debtor.	Circuit Court of Appeals—Fourth Circuit.	

103 [Copy]

Exhibit I to affidavit

Law Offices of

Winthrop, Stimson, Putnam & Roberts

Mutual Life Building No. 32 Liberty Street

New York City

Cable Address "Winstim"

NOVEMBER 29, 1935.

Hon. HOMER S. CUMMINGS,
The Attorney General of the United States,
Washington, D. C.

SIR: The Commonwealth & Southern Corporation, a Delaware corporation whom we represent, has brought suit in equity in the United States District Court for the District of Delaware praying that the Public Utility Holding Company Act of 1935 be declared to be unconstitutional and void as concerns said Company and seeking a permanent injunction against its enforcement as to it. The suit was filed on November 23rd, 1935, and the United States Attorney for the District of Delaware and the Postmaster of the City of Wilmington were served with process on that date. The Attorney General of the United States, the Postmaster General and the members of the Securities and Exchange Commission were also made parties, and copies of the bill of complaint were mailed on the same date to them.

The bill contains a prayer for a preliminary injunction pending the hearing and determination of the suit. It has been also the intention of the plaintiff to apply for a temporary restraining order prior to December 1st, pending the determination of the motion for a preliminary injunction.

We have advised our client that, in view of this public assurance, both the Corporation and its officers could safely rely on the purpose of the Department of Justice and all United States Attorneys

104 not to institute any criminal proceedings for alleged offenses against the Act committed prior to a determination by the Supreme Court as to its validity and that, in our opinion, it would therefore be unnecessary to proceed with either the motion for the temporary restraining order or the motion for a preliminary injunction in the pending suit.

Very respectfully yours,

WINTHROP, STIMSON, PUTNAM & ROBERTS.

Exhibit J to affidavit

In the District Court of the United States for the Southern District of New York

In Equity. No. E81–378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION AND UNITED GAS CORPORATION, DEFENDANTS; AND POWER SECURITIES CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY AND EASTON CONSOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS; HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES; JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES; AND JAMES M. LANDIS, ROBERT E. HEALY, GEORGE C. MATHEWS AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION, CROSS-DEFENDANTS

105 *Answer, counterclaim, and cross-bill—Stipulation and order bringing in additional parties as cross-defendants and intervenors—Bill of intervention of subsidiary companies*

In the District Court of the United States for the Southern District of New York

In Equity. No. E81–378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER

& Light Company, Electric Power & Light Corporation,
106 and United Gas Corporation, defendants; and Power Securities Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, Lehigh Power Securities Corporation, Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, The Washington Water Power Company, Pennsylvania Power & Light Company, and Easton Consolidated Electric Company, intervening defendants; Homer S. Cummings, Individually and as Attorney General of the United States; James A. Farley, Individually and as Postmaster General of the United States; and James M. Landis, Robert E. Healy, George C. Mathews, and James D. Ross, Individually and as Members of and Constituting the Securities and Exchange Commission, cross-defendants

Answer of Defendants and Intervening Defendants to the Amended and Supplemental Bill of Complaint

Defendants Electric Bond and Share Company (hereinafter called "Bond and Share"), American Gas and Electric Company (hereinafter called "American Gas"), American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation, and United Gas Corporation, and intervening defendants Power Securities Corporation, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, Lehigh Power Securities Corporation, Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, The Washington Water Power Company, Pennsylvania Power & Light Company, and Easton Consolidated Electric Company, for their joint and several answer to the Amended and Supplemental Bill of Complaint (hereinafter referred to as the "Bill") herein:

(Admissions, allegations, or denials made without specification of a particular defendant or defendants are made by each defendant
107 severally and by all defendants jointly. Allegations or denials referring to any particular defendant or defendants are made by the defendant or defendants to whom the same refer and, on information and belief, are adopted by the other defendants. The intervening defendants are included within the terms "defendant" or "defendants" as used herein.)

For a First Defense

1. For the purposes of this suit, and not otherwise, and reserving all objections or exceptions which might be raised as matter of law

to the Bill by motion to dismiss, motion to strike, or otherwise, in this suit, and further reserving the right to deny, qualify, or explain in any future suit or proceeding between the parties hereto, or other parties, any admission hereby made, admit all the allegations (or representations) of the Bill, except as hereinafter specifically denied, subject to explanations or qualifications hereinafter made.

2. In admitting any of the allegations of the Bill, particularly but not limited to those in paragraphs III, IV, V, VII, XXIII, XXIV and XXV, which refer to or are based upon the Public Utility Act of 1935, generally referred to as the "Act", defendants allege that said Act is unconstitutional and void, and confers no rights upon plaintiff, and imposes no duties upon defendants, or any of them, for the reasons fully set forth in defendants' separate Defense, Counterclaim and Cross-Bill (hereinafter referred to as the "separate defense") filed herewith, and hereby made a part of this Answer. The requirement of registration invoked by plaintiff herein is not separable from the other requirements and provisions of said Act, but is an integral part thereof subjecting defendants and each of them to prohibitions, disabilities, liabilities, and penalties, to which said defendants may not lawfully or constitutionally be subjected.

(In the following paragraphs of this Answer references are to the paragraph and page of the Bill which are denied, explained, or otherwise referred to in the text immediately following.)

3. Par. VI, pp. 4–6. Deny that defendant Bond and Share is a top holding company in a "holding company system" except in the limited and arbitrary sense in which the term "holding company system" is defined in the Act, and allege that, as set forth in the separate defense and the exhibits thereto, the defendants and their respective subsidiary companies are separate corporate entities and are separately managed and directed, and deny that defendant Bond and Share "controls" defendants American Gas, American Power & Light Company, Electric Power & Light Corporation, or National Power & Light Company, or any thereof, except to the extent hereinafter alleged. Deny that said defendant Bond and Share either owns or controls any electric or gas public utility company, but admits that said defendant exercises such degree of influence or control over the other defendants above mentioned, and through them of their electric and gas public utility subsidiary companies, as is inherent in defendant Bond and Share's stock ownership in such other defendants, which is set forth in paragraph VIII of the Bill. Such influence and control is exercised by voting the stock owned by defendant Bond and Share, and not by common officers, directors, or employees, or direct participation in the management, of such other defendants or their subsidiary companies.

108

With reference to the allegations of paragraph VI of the Bill as to the operating revenues of the so-called "Electric Bond and Share

System", defendants allege that the revenues of the operating public utility subsidiary companies within such so-called system are derived principally from the sale of gas and electric energy, and that some part of such revenues is reflected in interest and dividend payments to the holding company defendants, and allege that defendant Bond and Share receives substantial revenues from sources other than sales of either gas or electric energy within the United States.

Deny that the electric properties in such so-called system constitute interstate groups, except in so far as transmission lines extend across state boundaries interconnecting electric generating stations and transmission and distribution systems in different states. Allege that the electric public utility companies within the seven groups, referred to in the Bill, are predominantly intrastate companies engaged primarily in generation, distribution, and sale of electric power and energy within the states in which they respectively operate, subject to the jurisdiction and control of such states and
109 the regulatory authorities thereof, and that the transmission of electric energy across state boundaries is generally accomplished by the generating company for subsequent sale by it (or in some instances by associate companies) at retail within the state to which such energy is transmitted. Admit, however, that, in certain cases specifically referred to in the sparate defense, and the exhibits thereto, some of the subsidiary electric utility companies of the holding companies described in the Bill do sell electric energy moving across state boundaries, to the extent and in the approximate amounts set forth in such separate defense and the exhibits thereto. Such electric utility companies are not common carriers and their interstate business, if any, is severable and distinct from their intrastate business.

Deny that the gas properties in such so-called system form interconnected interstate systems for the production and transmission of manufactured and natural gas. Allege that some of said gas properties are entirely intrastate, both as to production, transmission, and sale, and that others of said gas properties engage primarily in intrastate production, distribution and sale of natural or manufactured gas, having as a minor and distinct portion of their business the transmission of gas produced or purchased by them in one state across a state boundary to another state, where it is distributed and sold at reduced pressure and at retail, subject to the jurisdiction and control of said state and the regulatory authorities thereof. Allege that others of said gas properties do have extensive pipe line facilities crossing state boundaries by which large amounts of gas are transmitted from one state to another, for retail sale at reduced pressure in the state to which transmitted by the same company (or in some instances by associate companies), subject to the jurisdiction and control of such state and its regulatory authorities. Admit, however, that in certain cases specifically referred to in the separate

defense and the exhibits thereto, certain of such gas utility companies sell natural or manufactured gas moving across state boundaries, to the extent and in the approximate amounts set forth in such separate defense and the exhibits thereto. Such gas utility companies are not common carriers and their interstate business, if any, is severable and distinct from their intrastate business.

110 4. Par. VII, subpar. 1, p. 6. Deny that since December 1, 1935, or prior thereto, defendants Bond and Share, American Gas, American Power & Light Company, National Power & Light Company, Electric Power & Light Corporation, United Gas Corporation, Power Securities Corporation, Lehigh Power Securities Corporation, or Easton Consolidated Electric Company, or any of them, have engaged or will engage in selling, transporting, transmitting, or distributing either natural of manufactured gas or electric energy. Deny that since December 1, 1935, or prior thereto, any of the defendants have owned or operated or will own or operate utility assets for the transportation, transmission, or distribution of natural or manufactured gas or electric energy in interstate commerce or across state boundaries, except that: defendants Idaho Power Company, Utah Power & Light Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, Appalachian Electric Power Company, The Ohio Power Company, and The Washington Water Power Company in some instances transmit, and in other instances sell, electric energy across state boundaries, and defendant United Gas Public Service Company transmits, and in some cases sells, gas across state boundaries. Certain subsidiaries of certain of the defendants, in some cases transmit, and in some cases sell, electric energy or gas across state boundaries. The extent which these defendants, and the subsidiary companies of any of the defendants, transmit or sell electric energy or gas across state boundaries is stated in the separate defense and the exhibits thereto.

Par. VII, subpar. 2, p. 6. Deny that defendant Bond and Share is engaged or will engage in taking steps in the performance of service, sales, or construction contracts, or the performance of similar contracts, but admit that Ebasco Services, Incorporated, a wholly owned subsidiary company of defendant Bond and Share, is engaged and will take steps in the performance of service contracts, and that Phoenix Engineering Corporation, a wholly owned subsidiary of said Ebasco Services, Incorporated, will take steps in the performance of service and construction contracts.

Deny that defendant American Gas has entered into service,
111 sales, or construction contracts, but admit that it has made arrangements whereby it has made available and rendered and will continue to make available and render to its subsidiary operating public utility companies services of the nature described in paragraph XXII of the Bill.

Deny that either defendant Bond and Share or defendant American Gas or Ebasco Services, Incorporated, or Phoenix Engineering Corporation, has made or will make or perform any sales contracts

with public utility companies or holding companies, or is engaged in selling or will sell goods to public utility companies or holding companies.

Par. VII, subpar. 3, p. 7. Defendants are without knowledge whether they will in the future distribute or make public offerings for sale or exchange of their own securities or the securities of their subsidiary companies or affiliates, or any thereof.

Par. VII, subpar. 4, p. 7. Defendants are without knowledge whether they will in the future acquire or negotiate for the acquisition of securities of their subsidiary companies or affiliates or of public utility or holding companies.

Par. VII, subpar. 5, p. 7. Deny that either defendant Bond and Share or defendant American Gas have engaged since December 1, 1935, or will engage in business in interstate commerce.

Deny that any of the defendants have engaged or will engage in interstate commerce, except to the extent that any of the acts specified in the separate defense and the exhibits thereto, may be held to constitute interstate commerce.

Par. VII, subpar. 6, pp. 7–8. Deny that defendant Bond and Share owns, controls, or holds voting securities of any electric or gas public utility company, but admit that it owns voting securities of defendant holding companies as alleged in Paragraph VIII of the Bill, which defendants in turn own voting securities of electric and gas utility subsidiary companies. The extent to which subsidiary companies of the defendants, or any thereof, sell, transport, transmit, or distribute natural or manufactured gas or electric energy, or own or operate utility assets therefor, across state boundaries, is set forth in the separate defense and the exhibits thereto, and except to
112 the extent that transactions therein set forth may be held to constitute interstate commerce, defendants deny that subsidiary companies of said defendants are engaged in interstate commerce or in the ownership of utility assets therefor.

Par. VII, subpar. 7, p. 8. Deny that any subsidiary company of defendant Bond and Share is engaged in the performance of sales contracts or in selling goods to public utility companies or holding companies.

5. Pars. IX, X, XI, XII, and XIII, pp. 9–13. Deny the allegations of these paragraphs that defendants, respectively, own "substantially all" of the voting securities of the subsidiary companies so specified in said paragraphs, except to the extent stated in the separate defense, where the percentages of said securities owned by defendants are accurately set forth. In this connection defendants do not deny that the ownerships so specified are in each case sufficient to constitute voting control for the purpose of election of directors and other matters requiring stock vote.

Par. XII, subpar. 1, p. 11. Deny that United Production Corporation, Southern Gas & Fuel Company, and Compania Mexicana de Gas, S. A., are public utility companies.

Par. XIII, subpar. 1, p. 12. Deny that Susquehanna Gas Company is a public utility company. Deny that defendant Pennsylvania Power & Light Company owns any of the voting securities of The Carlisle Gas and Water Company, Columbia Gas Company, Pine Grove Electric Light, Heat & Power Company, or Shenandoah Light, Heat, and Power Company, and allege that pursuant to the provisions of an order of the Public Service Commission of the Commonwealth of Pennsylvania, dated November 25, 1935, such companies and the properties and business thereof were merged into or consolidated with those of defendant Pennsylvania Power & Light Company, and further allege that said defendant Pennsylvania Power & Light Company, in addition to owning all or substantially all of the voting securities of Lehighton Electric Light and Power Company, as alleged in the Bill, also owns or controls 50% of the voting securities of Stanton Operating Company and approximately 27% of the voting securities of Conestoga Transmission Company, which are electric utility companies.

6. Par. XIV, p. 13. Allege that the exemption of the companies named in said paragraph from the provisions of the Holding
113 Company Act under the terms of the rule set forth in Exhibit A attached to the Bill is a temporary exemption existing in the sole discretion of the plaintiff and that such companies have no means of knowing whether said exemption will continue after February 2, 1936; that such companies are subsidiary companies of the defendant Bond and Share and of their respective holding companies, within the meaning of Section 2 (a) (8) of the Act, and are not entitled to exemption or to claim exemption as subsidiary companies under said Act, and that exemption of said companies as holding companies will be without substantial value to them if defendant Bond and Share or their respective holding companies shall be required to register under the Act, as such companies would remain subsidiary companies subject to all or practically all the provisions of said Act.

7. Par. XV, subpar. 1, pp. 14–16. Deny that electric energy is transmitted in interstate commerce, or that lines, assets, or facilities therefor are owned, leased, or operated, by the defendants or any of them or by any of their subsidiary companies except in the manner and to the extent alleged in the separate defense and the exhibits thereto and except in so far as the transactions therein described may be held to constitute interstate commerce. Defendants admit that the figures stated in the tables set forth on pages 15 and 16 of the bill are substantially correct on the premises stated and defined on said page 15, but deny that the electric energy transmitted across state boundaries is transmitted in interstate commerce or is "interstate electric energy" except in so far as sales of such electric energy in the manner and amounts set forth in the separate defense and the exhibits thereto may be held to constitute interstate commerce, and defendants refer thereto for a statement of the facts. Defendants deny that the act of selling electric energy across state boundaries

in itself constitutes interstate commerce subject to Federal regulation or control.

In admitting the figures stated in the table set forth on said pages 15 and 16, defendants further allege that while the figures are approximately accurate on the basis of information available, it is impossible to state such figures with complete accuracy because of mechanical difficulties of measurement, including the ab-
114 sence of state line meters, the records in certain cases having been kept only for the purpose of showing net deliveries or transfers. Furthermore, the figures stated include duplications of more than 1,184,000,000 kilowatt hours, substantially as follows:

American Gas and Electric System: In 1933 The Ohio Power Company delivered at or near the Ohio-Indiana boundary approximately 300,000,000 kilowatt hours to Indiana & Michigan Electric Company, which figure is included in the total quantities of electric energy and so-called interstate electric energy handled by said Indiana & Michigan Electric Company and The Ohio Power Company.

In 1933 The Ohio Power Company delivered at or near the Ohio-West Virginia boundary approximately 100,000,000 kilowatt hours to Appalachian Electric Power Company, and this transaction is included in the total quantities of electric energy and so-called interstate electric energy handled by each of said companies. In the same year Appalachian Electric Power Company delivered at or near said Ohio-West Virginia boundary approximately 100,000,000 kilowatt hours to The Ohio Power Company and this transaction is also included in the total quantities of electric energy and so-called interstate electric energy handled by each of said companies.

American Power & Light System: Minnesota Power & Light Company in 1933 delivered at or near the Minnesota-Wisconsin boundary approximately 18,396,000 kilowatt hours to Northern Power Company and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Minnesota Power & Light Company and Northern Power Company.

Minnesota Power & Light Company in 1933 delivered at or near the Minnesota-Wisconsin boundary approximately 12,351,000 kilowatt hours to Superior Water, Light and Power Company, and this figure is included in the total quantities of electric energy and so-called interstate electric energy handled by both Minnesota Power & Light Company and Superior Water, Light and Power Company.

Electric Power & Light System: Louisiana Power & Light Company in 1933 delivered at or near the Louisiana-Arkansas boundary approximately 164,973,000 kilowatt hours to Arkansas Power & Light Company, and this figure is included in the total quan-
115 tities of electric energy and so-called interstate electric energy handled by both Louisiana Power & Light Company and Arkansas Power & Light Company.

Louisiana Power & Light Company in 1933 delivered at or near the Louisiana-Mississippi boundary approximately 126,559,000 kilowatt hours to Mississippi Power & Light Company and this figure

is included in the total quantities of electric energy and so-called interstate electric energy handled by both Louisiana Power & Light Company and Mississippi Power & Light Company.

National Power & Light System: In 1933 Carolina Power & Light Company delivered to Tennessee Public Service Company at or near the Tennessee-North Carolina boundary approximately 89,821,000 kilowatt hours, which figure is included in the total quantities of electric energy handled, and as representing the so-called interstate electric energy handled, by said Tennessee Public Service Company and is also included in the total quantities of electric energy and the so-called interstate energy handled by said Carolina Power & Light Company.

In addition, in 1933 Carolina Power & Light Company itself delivered at a point at the North Carolina-Virginia boundary and arranged for Tennessee Public Service Company, an associate company, to deliver at Kingsport, Tennessee, approximately 260,000,000 kilowatt hours of electric energy to Appalachian Electric Power Company, and this transaction is included in the total quantities of electric energy and so-called interstate electric energy handled by both Carolina Power & Light Company and Appalachian Electric Power Company. In the same year Appalachian Electric Power Company delivered to Carolina Power & Light Company itself, or to Tennessee Public Service Company for the account of said Carolina Power & Light Company at the same points of delivery, approximately 12,500,000 kilowatt hours and this transaction is included in the total quantities of electric energy and the so-called interstate electric energy handled by both Appalachian Electric Power Company and Carolina Power & Light Company.

8. Par. XV, subpar. 2, pp. 16–17. Deny that natural or manufactured gas is transmitted in interstate commerce by the gas utility companies which are subsidiary companies of defendants United Gas Corporation or American Power & Light Company or that
116 said gas utility companies own, lease, or operate utility assets for such transmission or take part in such transmission except in the manner and to the extent that the acts set forth in the separate defense and exhibits thereto may be held to constitute interstate commerce. Deny that subsidiary companies of defendant United Gas Corporation own or operate utility assets for the transmission of or transmit or take part in the transmission of natural or manufactured gas in interstate commerce except to the extent that the acts set forth in the separate defense and the exhibits thereto may be held to constitute interstate commerce. Deny that Consolidated Gas Utilities Company is a subsidiary company of United Gas Corporation. Deny that subsidiary gas public utility companies of defendant American Power & Light Company own or operate utility assets for the transmission of or transmit or take part in the transmission of either natural or manufactured gas in interstate commerce except to the extent that the acts set forth in the separate defense and the ex-

hibits thereto may be held to constitute interstate commerce. Defendants deny that the act of selling gas across state boundaries itself constitutes interstate commerce subject to Federal regulation or control.

9. Par. XVI, subpar. 1, p. 18. Deny that, except as hereinafter alleged, defendant Bond and Share organized defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, or American Gas; deny that defendant Bond and Share had the purpose or intention of employing said companies as its corporate instrumentalities for the acquisition, financing, or control of operating public utility companies; deny that at the time of the organization of the said companies defendant Bond and Share acquired by subscription or purchase, or in exchange for property, voting securities of said companies in an amount sufficient to enable it to dominate or control the affairs of said companies; deny that it retained voting securities in amounts sufficient to insure such domination and control.

Allege that defendant Bond and Share took a leading part, and a substantial financial interest, in organizing or creating such financial or underwriting syndicates as were required or used in the organization of said defendant holding companies. In some
117 cases defendant Bond and Share turned over to the newly organized holding companies the stock of operating public utility companies owned by it; in others, the holding companies acquired directly from former owners, other than defendant Bond and Share, the stocks of such operating public utility companies. In other cases the holding companies acquired from former owners, other than defendant Bond and Share, some stocks of operating public utility companies, and in addition thereto defendant Bond and Share turned over to such holding companies some stocks of operating public utility companies owned by it. Upon the completion of the prerequisite financial arrangements, defendant Bond and Share became, in effect managing agent for the said syndicates in accomplishing the organization of said holding companies. The administrative, supervisory, investigating, and clerical work was done by or under the direction of defendant Bond and Share. Defendant Bond and Share employed for the account of said syndicates, or the newly organized holding companies, attorneys, auditors, engineers, and such other professional or expert services as so required. Said work was done for the account of each of such newly organized holding companies, and was paid for by them in such manner as may have been agreed upon in each particular case. The initial financial interest taken by defendant Bond and Share in each of said holding companies and the proportion of voting stock initially received by it or issued upon its order varied in different cases. The remainder of the original issue of securities was distributed through syndicate participations or general or limited public subscriptions under the supervision of defendant Bond and Share. The defendant Bond and

Share retained the voting securities originally acquired by it, and has subsequently purchased and acquired additional voting stock of said holding companies until it now has the amounts of such stock as alleged in paragraph VIII of the Bill.

Deny that defendant Bond and Share has at any time completely dominated or controlled the corporate activities of said defendant holding companies, but admit that defendant Bond and Share has exercised and now exercises such degree of influence and control over said companies as is inherent in its ownership of the voting securities of said companies, as alleged in paragraph
118 VIII of the Bill, such influence and control being now exercised in the manner alleged in paragraph 3 hereof.

Deny that defendant Bond and Share caused its own officers to be elected directors and officers of any of the said defendant holding companies at the time of the organization thereof, but admit that certain of its directors and executive officers were elected and remained directors and officers of each said defendant holding companies until after the passage of the Act.

Deny that since the passage of the Act defendant Bond and Share caused the resignations of officers and directors of said holding companies or the election of certain of its executive officers as officers and directors of said defendant holding companies, either to create a management subject to the domination or control of defendant Bond and Share, or otherwise, but admit that such officers and directors resigned.

Deny that the officers and directors of said defendant holding companies are persons designated by defendant Bond and Share, or are persons subject to the direction or control of defendant Bond and Share.

10. Par. XVI, subpar. 2, p. 19. Deny that defendant Bond and Share caused defendants American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company to enter into service contracts or that pursuant thereto defendant Bond and Share performed substantially all of the activities necessary to the conduct of such companies' corporate business and functions, but admit that up to a short time prior to the filing of the original Bill of Complaint herein, such service contracts existed, and officers and employees of defendant Bond and Share acted as the officers of said defendants, and administered their corporate activities, subject to the direction and control of the directors thereof.

Deny that defendant Bond and Share assigned such service contracts with such holding companies to Ebasco Services, Incorporated, or that defendant Bond and Share itself or through Ebasco Services, Incorporated, or otherwise, does now or will continue to perform the services provided for by said contracts, and allege that such contracts were cancelled subsequent to the passage of the
119 Act and prior to the filing of the original Bill of Complaint herein.

11. Par. XVI, subpar. 3, p. 19. Deny that the securities of the public utility companies owned by defendants American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, and American Gas were either transferred to them by defendant Bond and Share or purchased by them at the instance of said defendant, except to the extent hereinbefore set forth in paragraph 9 of this Answer.

Deny that said defendant holding companies last above named perform no other function with reference to companies the stock of which is owned by them, except to serve as, or that they do serve as, a medium through which defendant Bond and Share may publicly finance the operations of operating public utility companies or through which defendant Bond and Share, either with a comparatively small investment, or otherwise, may or does dominate or control the operations of operating public utility companies, and allege that each of said defendant holding companies is separately officered, staffed, directed, and financed (except that two officers and directors of defendant Bond and Share are also directors of defendant American Gas) and functions as a corporate entity separate and distinct from that of defendant Bond and Share.

Deny that defendant Bond and Share has used said defendant holding companies as instrumentalities for dominating or controlling the operations of operating public utility companies.

Deny that all important questions of business policy and personnel arising in the operations of the subsidiary public utility companies of said defendant holding companies are determined by defendant Bond and Share. Deny that said public utility companies are controlled or operated as component members of a single system. The method of operation of said companies is hereinafter alleged in the separate defense and the exhibits thereto.

12. Par. XVI, subpar. 4, p. 20. Deny that defendant Bond and Share has controlled or directed or now controls or directs the operations of any operating public utility companies by means of supervisory services rendered to such companies, or otherwise, or that it caused any operating public utility companies to negotiate or enter into service contracts for the performance of services substantially the same as those referred to in paragraph XVIII of the Bill, but admit that it entered into such contracts with many of such companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, but admit that Ebasco Services Incorporated, renders services to operating public utility subsidiary companies of the defendant holding companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, supervises, directs, or controls in any way the operations of its subsidiary operating public utility companies, but admit such supervision by Ebasco Services Incorporated as is provided for in such service contracts.

13. Par. XVI, subpar. 5, p. 21. Deny that defendant Bond and Share has controlled or directed by any means or instrumentality the business and affairs of any public utility companies; that it has caused holding companies to purchase controlling interests in public utility companies; that it has constructed or caused operating public utility companies to construct utility properties; that it has caused the purchase and construction of utility properties or that it has caused the development of interconnections between properties of public utility subsidiary companies of the defendant holding companies, but admit that there has been a development of such interconnections between such public utility properties, and that defendant Bond and Share has assisted in and exerted a substantial influence in the development of the public utility properties of subsidiary companies of the other defendant holding companies.

Deny that defendant Bond and Share, either in its own capacity or through the corporate organizations of the other defendants herein, or otherwise, is engaged or will engage in the transmission in interstate commerce of electric energy or manufactured or natural gas.

14. Par. XVI, subpar. 6, p. 21. Deny that defendant American Gas by virtue of the rendition of supervisory services or otherwise is itself engaged in the interstate transmission of electric energy.

121 15. Par. XVI, subpar. 7, p. 22. Deny that defendants Power Securities Corporation, Lehigh Power Securities Corporation, or Houston Gulf Gas Company are either themselves, or through the instrumentality of their subsidiary public utility companies, engaged in the interstate transmission of electric energy or natural or manufactured gas.

16. Par. XVII, p. 22. Deny each and every allegation contained in paragraph XVII of the Bill. Allege that such services have been rendered in the past, but that the contracts therefor have been cancelled as alleged in paragraph 10 hereof and that such services are no longer rendered.

17. Par. XVIII, pp. 24–29. Deny that defendant Bond and Share, in its own name or through Ebasco Services, Incorporated, or otherwise, but admit that Ebasco Services, Incorporated, by the use of the mails or means or instrumentalities of interstate commerce, is and will be engaged in taking steps in the performance of its existing service contracts with operating public utility companies.

Deny that under such contracts defendant Bond and Share, in its own name or through Ebasco Services, Incorporated, or otherwise, undertakes to render, but admit that Ebasco Services, Incorporated, for an agreed rate of compensation based upon total monthly operating revenues undertakes to render, and does render, extensive services, and that its client operating public utility companies agree to accept such services and to pay for the same.

Admit that the service contracts now being performed by Ebasco Services, Incorporated, provide for rendering services substantially

the same as those referred to in paragraph XVIII of the Bill, but allege that no executives or other members of the organizations of defendant Bond and Share or of Ebasco Services, Incorporated, are serving as officers or directors of said client operating companies doing business in the United States.

18. Par. XIX, p. 29. Deny that defendant Bond and Share itself, or through the instrumentality of Ebasco Services, Incorporated, or otherwise, controls or directs the purchasing of or purchases the materials, supplies, or equipment required by operating public utility companies, but admit that Ebasco Services, Incorpo-
122 rated, as part of the general services rendered to its client operating public utility companies, renders certain advisory and other services in connection with the purchasing of some, but not all, of the materials, supplies, and equipment required by said operating public utility companies.

Deny that defendant Bond and Share is now a party to any contracts, agreements, or understandings under which materials, supplies, or equipment are purchased by or for the account of public utility operating companies, and deny that Ebasco Services, Incorporated, is a party to any contracts, agreements, or understandings with any manufacturing company under which it undertakes to place orders with any such company for all or any material part of the materials, supplies, and equipment required by its client public utility operating companies, but admit that Ebasco Services, Incorporated, has arranged for certain contracts with one or more independent manufacturing companies under which said Ebasco Services, Incorporated, enables its client operating public utility companies, if they so elect, to place with such manufacturing companies orders for certain but not all of the materials, supplies, and equipment which may be required by such client operating public utility companies, all as more fully set forth in paragraph 38 of the separate defense.

Deny that defendant Bond and Share, either in its own name or through the instrumentality of Ebasco Services, Incorporated, or otherwise, or that said Ebasco Services, Incorporated, purchases any materials, supplies, or equipment for the account of public utility operating companies, and admit that Ebasco Services, Incorporated, makes purchases as agent for its client companies and, by volume contracts negotiated with manufacturing and supply companies, enables its client operating public utility companies to purchase annually materials, supplies, and equipment valued at several millions of dollars.

Deny that defendant Bond and Share or said Ebasco Services, Incorporated, either causes or will cause any of such materials, supplies, and equipment to be shipped in interstate commerce, except, as to Ebasco Services, Incorporated, to the extent alleged in said paragraph 38 of the separate defense.

19. Par. XX, p. 30. Deny that defendant Bond and Share,
123 through Phoenix Engineering Corporation or otherwise, but

admit that Phoenix Engineering Corporation, in accordance with the terms of the service contracts now in effect between Ebasco Services, Incorporated, and the operating public utility companies as hereinabove set forth, in the ordinary course of its business by the use of the mails or means or instrumentalities of interstate commerce, negotiates and enters into construction contracts with operating public utility companies.

Deny that defendant Bond and Share, through Phoenix Engineering Corporation or otherwise, but admit that Phoenix Engineering Corporation, in the ordinary course of its business, by use of the mails or means or instrumentalities of interstate commerce, is engaged in taking steps in connection with the performance of such construction contracts.

20. Par. XXI, p. 31. Deny that defendant Bond and Share and Ebasco Services, Incorporated, or either of them, have caused the securities of defendant American Gas or of its subsidiaries to be offered for sale or distributed or sold in interstate commerce, and allege that they are without knowledge whether they will take any steps in the performance of financial services for defendant American Gas or its public utility subsidiary companies.

21. Par. XXII, pp. 31–32. Deny that services rendered by defendant American Gas are performed in consideration of an agreed rate of compensation paid to defendant American Gas, and allege that such services are rendered to the operating public utility companies at the cost thereof to defendant American Gas, which cost is apportioned between said companies and includes no profit or fee payable to defendant American Gas in excess of such cost.

22. Par. XXIII, pp. 33–35. Deny that defendant Bond and Share, either in its own name or through its subsidiary Ebasco Services, Incorporated, or through said Phoenix Engineering Corporation, or otherwise, since December 1, 1935, has engaged in a business in interstate commerce.

Deny that the performance of service or construction contracts by Ebasco Services, Incorporated, or Phoenix Engineering Corporation contemplates or requires a continuous or regular intercourse in interstate commerce, but admit that such contracts require the transportation across state boundaries of papers, reports, and forms be-
124 tween the office of Ebasco Services, Incorporated, and its client operating companies, and admit that the information furnished by Ebasco Services, Incorporated, in connection with the exchange of apparatus results in the transportation of certain apparatus across state boundaries between the place of business of the company selling such apparatus and the place of business of the company purchasing such apparatus.

Deny that defendant Bond and Share, pursuant to these service contracts, or otherwise, sends persons from its offices in New York to operating public utility companies, but admit that Ebasco Services,

Incorporated, and Phœnix Engineering Corporation are required to send, and do send, sponsors, operating specialists, engineers, and other employees from their offices in New York to the states in which such public utility companies served by them operate.

Deny that defendant Bond and Share, through its officers or employees or otherwise, performs any services pursuant to such service contracts by any means or instrumentality whatsoever, but admit that the accounting, financial, and other services performed pursuant to said contracts by the officers and employees of Ebasco Services, Incorporated, and Phœnix Engineering Corporation from the offices of said companies in New York City, for public utility operating companies in other states, are performed in part by means of interstate communication and instrumentalities of interstate commerce.

Deny that either defendant Bond and Share or said Ebasco Services, Incorporated, enters into contracts for the sale of equipment or supplies to said client operating companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services, Incorporated, or otherwise, but admit that Ebasco Services, Incorporated, in accordance with the provisions of the contracts with its client operating companies, arranges for the making of contracts under which manufacturing or other companies sell equipment and supplies to said client companies, which contracts are performed in part by means or instrumentalities of interstate commerce.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services, Incorporated, but admit that said
125 Ebasco Services Incorporated, in accordance with the provisions of its contracts with client operating companies, arranges for the transportation by means or instrumentalities of interstate commerce of equipment and supplies to client companies.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, but admit that Ebasco Services Incorporated, in accordance with the terms of contracts with its client operating companies, furnishes information and services in connection with the exchange of apparatus by means of which purchases, sales and exchanges of second hand apparatus and materials are made between and among client companies, and between client companies and other companies, and that the conduct of such apparatus exchange contemplates and requires shipments of apparatus and materials by means or instrumentalities of interstate commerce.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, or that Ebasco Services Incorporated, negotiates or takes charge of the sale or distribution in interstate commerce of securities of client operating companies, and deny that at this time either of said companies directs the sale of securities of client companies to persons in the territories which they serve.

Deny that defendant Bond and Share, either in its own name, or through Ebasco Services Incorporated, or through Phœnix Engineering Corporation, or that Ebasco Services Incorporated itself, but admit that Phœnix Engineering Corporation, purchases and arranges for the shipment of materials, supplies and equipment, by means or instrumentalities of interstate commerce as contemplated in and required by the construction contracts negotiated and entered into as hereinabove set forth.

Deny that defendant Bond and Share receives, either in its own name, or through Ebasco Services Incorporated, or through Phœnix Engineering Corporation, but admit that Ebasco Services Incorporated and Phœnix Engineering Corporation receive, compensation from their client companies for the performance of the services referred to in paragraph XXIII of the Bill.

126 Deny that the performance for compensation of services by Ebasco Services Incorporated or by Phœnix Engineering Corporation, referred to in paragraph XXIII of the Bill constitutes a business in interstate commerce.

Deny that defendant Bond and Share, either in its own name or through Ebasco Services Incorporated, or through Phœnix Engineering Corporation, is engaged in interstate commerce.

23. Par. XXIV, p. 35. Deny that defendant American Gas is engaged in rendering construction services for its subsidiary operating public utility companies, or that the performance of any services rendered by it to such companies requires any intercourse or transportation in interstate commerce except of reports, stationery, forms and clerical material, the use of facilities of interstate commerce in the transportation of officers and employees, and interstate communication by use of the mails, telephone and telegraph.

Deny that the performance of any services, as hereinbefore admitted, by defendant American Gas constitutes engaging in business in interstate commerce, or that said defendant is engaged in any business in interstate commerce.

As a Separate and Distinct Defense and by Way of Counterclaim and Cross-Bill

Defendants jointly and severally allege:

24. Defendant Bond and Share and defendants American Gas, American Power & Light Company, Electric Power & Light Corporation, National Power & Light Company, United Gas Corporation, Power Securities Corporation, Lehigh Power Securities Corporation and Easton Consolidated Electric Company, which defendants other than Bond and Share are hereinafter sometimes referred to collectively as "holding company defendants", are duly organized and existing corporations, the states in which they are incorporated and of which they are citizens and residents and the locations of offices respectively maintained by them for the transaction of business being:

127

Defendant	State of incorporation	Location of office
Electric Bond and Share Company	New York	New York, N. Y.
American Gas and Electric Company	New York	New York, N. Y.
American Power & Light Company	Maine	New York, N. Y.
Electric Power & Light Corporation	Maine	New York, N. Y.
National Power & Light Company	New Jersey	New York, N. Y.
United Gas Corporation	Delaware	New York, N. Y.
Power Securities Corporation	New Hampshire	New York, N. Y.
Lehigh Power Securities Corporation	Delaware	New York, N. Y.
Eastern Consolidated Electric Company	New Jersey	Allentown, Pa.

Defendants Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, Atlantic City Electric Company, Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, Houston Gulf Gas Company, The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, The Washington Water Power Company, and Pennsylvania Power & Light Company, which defendants are hereinafter sometimes referred to collectively as "operating company defendants" but which are also holding companies, as hereinafter set forth, are duly organized and existing corporations, the states in which they are incorporated and of which they are citizens and residents and the locations of their respective principal offices for the transaction of business being:

Defendant	State of incorporation	Principal office
Appalachian Electric Power Company	Virginia	Roanoke, Va.
The Ohio Power Company	Ohio	Canton, Ohio.
The Scranton Electric Company	Pennsylvania	Scranton, Pa.
Atlantic City Electric Company	New Jersey	Atlantic City, N. J.
Idaho Power Company	Maine	Boise, Idaho.
Utah Power & Light Company	Maine	Salt Lake City, Utah.
United Gas Public Service Company	Delaware	Houston, Texas.
Houston Gulf Gas Company	Delaware	Houston, Texas.
The Montana Power Company	New Jersey	Butte, Mont.
Nebraska Power Company	Maine	Omaha, Neb.
Pacific Power & Light Company	Maine	Portland, Ore.
The Washington Water Power Company	Washington	Spokane, Wash.
Pennsylvania Power & Light Company	Pennsylvania	Allentown, Pa.

128 25. The plaintiff Securities and Exchange Commission is an independent agency in the executive branch of the Government of the United States with its principal office and domicile in the District of Columbia. The cross-defendants (made parties hereto by order of this Court) are administrative officers of the United States and are inhabitants of the District of Columbia. They are more particularly identified as follows: Homer S. Cummings (hereinafter referred to as the "Attorney General") is Attorney General of the United States; James A. Farley (hereinafter referred to as the "Postmaster General") is the Postmaster General of the United States; James M. Landis, Robert E. Healy, George C. Mathews, and James D. Ross (hereinafter referred to collectively

as the "Commissioners") are members of and constitute the Securities and Exchange Commission.

The plaintiff and the cross-defendants threaten to perform certain acts, and to subject defendants to certain prohibitions, liabilities, and penalties, under the pretended authority of Title I of that certain Act of Congress (Public, No. 333—74th Congress—S. 2796; Title 15, Sections 79 to 79z6, both inclusive, U. S. C. A.), entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes", approved August 26, 1935, which Title I in Section 33 thereof is designated "Public Utility Holding Company Act of 1935", and for brevity may be sometimes hereinafter referred to as the "Holding Company Act", or simply as the "Act." For reasons hereinafter set forth, the threatened acts of the plaintiff and the cross-defendants are not authorized, and said Act is unconstitutional and void. The plaintiff and the cross-defendants are, therefore, wholly without authority to do those things with which they are charged herein. There has thus arisen between the plaintiff and the defendants and between the defendants and the cross-defendants an actual controversy in which the plaintiff and the cross-defendants assert and propose to exercise, and the defendants deny, their authority to prohibit, control, regulate, or manage the business, affairs, or acts of the defendants under any of the provisions of said Holding Company Act.

26. This is a civil suit in equity, wherein the matter in con-
129 troversy exceeds the sum of value of $3,000, exclusive of interest and costs, arises under the Constitution and laws of the United States, and is within the equity jurisdiction of this Court. This is also a case of actual controversy involving civil and property rights, of which this Court, pursuant to Section 274 (d) of the Judicial Code (Title 28, Section 400, U. S. C. A.) has jurisdiction to declare rights and other legal relations and the defendants are interested parties petitioning for such declaration and for such further relief by injunction or otherwise as may be necessary or proper.

27. Section 2(a) of Said Holding Company Act defines (in its numbered paragraphs hereinafter set forth) the following, among other, terms: (3) Electric utility company, (4) Gas utility company, (5) Public-utility company, (7) Holding company, (8) Subsidiary company, (9) Holding-company system, (10) Associate company, (11) Affiliate, (12) Registered holding company, (16) Security, (17) Voting security, (19) Service contract, (20) Sales contract, (21) Construction contract, (29) Integrated public-utility system. When such terms are hereinafter used, they are used in their statutory sense, as thus defined in said Section 2(a) of said Holding Company Act.

28. Defendant Bond and Share is a holding company, in that it owns ten per centum or more (the exact percentages being hereinafter stated in paragraph 39 and Exhibit VI hereof) of the outstanding voting securities of the following named defendants, each

of which is likewise a holding company, to wit: American Gas, American Power & Light Company, Electric Power & Light Corporation, and National Power & Light Company. Defendant Bond and Share also owns approximately seven per centum of the outstanding voting securities of defendant United Gas Corporation, which is also a holding company.

Descriptions of each of said holding company defendants and of the subsidiary companies thereof and of the facts and circumstances which constitute each of said defendants herein a holding company are hereinafter set forth in paragraphs 32 to 36 hereof.

Defendant Bond and Share does not own, control, or hold
130 with power to vote any voting securities of any of the holding company defendants or operating company defendants other than as above set forth.

Defendant Bond and Share's investment in the securities of the holding company defendants herein has exceeded, and now exceeds, the sum of $200,000,000. Defendant Bond and Share also owns bonds of operating public utility subsidiary companies of the holding company and operating company defendants which cost said defendant approximately $10,600,000 and which have a present value of approximately $11,700,000.

Defendant Bond and Share now has outstanding 1,155,655 shares of $6 Preferred Stock, 300,000 shares of $5 Preferred Stock, and 5,267,147 shares of Common Stock held, in the aggregate, by approximately 130,000 stockholders who reside in every state in the United States and in many foreign countries. Each share of stock has one vote. More than a majority of said stockholders reside outside the State of New York, in which said defendant is incorporated. No stockholder owns more than 1.1 per centum of the presently outstanding stock of said defendant Bond and Share.

29. Defendant Bond and Share also owns more than ten per centum of the outstanding voting securities of American & Foreign Power Company Inc., which is a holding company, through its ownership of voting securities of certain holding companies and of certain public utility companies which operate solely in countries outside the boundaries of the United States.

Said defendant Bond and Share also has investments in the common stock and other securities of other public utility holding companies. These investments, while substantial in amount, are small in proportion to the aggregate voting stock of said companies and insufficient to constitute said defendant either a holding company or an affiliate of said companies as defined in said Holding Company Act, and said defendant has no service arrangement, common directors or other affiliation with said companies except that of investment.

30. Defendant Bond and Share also owns all the outstanding capital stock of Ebasco Services Incorporated, a corporation organized under the laws of New York, which furnishes certain services, as

more fully alleged in paragraph 38 hereof, to all or substan-
131 tially all of the public utility companies which are subsidiary companies of the defendant holding companies above mentioned, other than defendant American Gas, to which company and its subsidiary companies no such services are furnished. Ebasco Services Incorporated, in turn owns all, or substantially all of the outstanding capital stock of (a) Two Rector Street Corporation, a New York corporation which owns an office building at No. 2 Rector Street, New York, N. Y., (b) Emprezas Electricas Brasileiras, S. A., a corporation of the Republic of Brazil which renders certain services to public utility companies operating in Brazil which are indirect subsidiary companies of the above mentioned American & Foreign Power Company Inc., and (c) Phoenix Engineering Corporation, a Delaware corporation which renders engineering services to certain of the public utility companies which are subsidiary companies of the holding company defendants.

31. By the terms of paragraph (9) of Section 2 (a) of said Holding Company Act, the defendant Bond and Share and the other holding company and operating company defendants and the subsidiary companies of said defendants, consisting principally of operating public utility companies, constitute a so-called holding company system, and each of the other defendants individually with its subsidiary holding and operating companies likewise constitutes a so-called holding company system. These companies, together with their interrelations and the principal business done by each of them, are described in the following paragraphs:

32. Defendant American Power & Light Company, hereinafter called "American Company", is a holding company in that it owns more than ten per centum (the respective percentages being indicated after the name of each company) of the outstanding voting securities of the following defendants and of the following electric and gas utility companies which are conducting and for several years last past have conducted electric and/or gas utility businesses, and incidentally in some cases other businesses in the states hereinafter mentioned:

Central Arizona Light and Power Company (98.04%) generates and distributes electric energy, and distributes natural gas, solely In Arizona. Florida Power & Light Company (100%) gen-
132 erates and distributes electric energy and gas solely in Florida.

Kansas Gas and Electric Company (90.55%) generates and distributes electric energy solely in Kansas, except for the distribution of electric energy to a few customers in Missouri. Minnesota Power & Light Company (93.03%) generates and distributes electric energy in Minnesota and also makes certain sales of electric energy at the Minnesota-Wisconsin boundary. Defendant The Montana Power Company (99.75%) generates and distributes electric energy and distributes natural gas in Montana and has a subsidiary company, Idaho Transmission Company, which distributes and delivers

electric energy in Idaho and has an insignificant amount of property in Montana. Montana Power Gas Company (99.99%) produces and transmits natural gas solely in Montana. Defendant Nebraska Power Company (88.39%) generates and distributes electric energy in Nebraska, sells electric energy at or near the Iowa-Nebraska boundary, and has a subsidiary company, Citizens Power & Light Company, which distributes in Iowa electric energy purchased in Nebraska and owns an insignificant amount of propery in Nebraska. New Mexico Eelectric Service Company (99.99%) generates and distributes electric energy solely in New Mexico. Northern Power Company (98.80%) transmits and distributes in Wisconsin electric energy purchased at the Minnesota-Wisconsin boundary. Northwestern Electric Company (67.63%) generates and distributes electric energy in Oregon and Washington. Defendant Pacific Power & Light Company (94.66%) generates and distributes electric energy in Washington and Oregon and has a subsidiary company, Inland Power & Light Company, which generates and distributes electric energy in Washington and generates electric energy in Oregon. Portland Gas & Coke Company (84.03%) manufactures and distributes gas solely in Oregon, except for comparatively small distribution of such gas in Washington. Superior Water, Light, and Power Company (66.56%) distributes electric energy and gas in Wisconsin. Texas Electric Service Company (98.96%) generates and distributes electric energy solely in Texas. Texas Power & Light Company (96.76%) generates and distributes electric energy solely in Texas. Texas Public Utilities Corporation (99.95%) distributes electric energy and sells natural gas at wholesale solely in Texas. Defendant The
133 Washington Water Power Company (99.68%) generates and distributes electric energy in Washington and Idaho and has a subsidiary company, Chelan Electric Company, which generates electric energy in Washington and Idaho.

Defendants The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, and The Washington Water Power Company are holding companies in that they own all or substantially all of the voting securities of the companies above designated as their respective subsidiary companies.

None of the electric properties of the companies mentioned in this paragraph 32 is physically interconnected or is capable of physical interconnection with the properties of the other companies mentioned in this paragraph 32 into an "integrated public-utility system", as defined in Section 2 (a) (29) of the Act, which under normal conditions may be economically operated as a single interconnected and coordinated system, except that:

(a) The properties of defendants The Washington Water Power Company and The Montana Power Company, most of the properties of Pacific Power & Light Company and the properties of Northwestern Electric Company, Inland Power & Light Company, Idaho

Transmission Company, and Chelan Electric Company are interconnected by means of transmission lines.

(b) The properties of Minnesota Power & Light Company, Northern Power Company, and Superior Water, Light, and Power Company are interconnected by means of transmission lines.

(c) The properties of defendant Nebraska Power Company and its subsidiary company, Citizens Power & Light Company, are interconnected by means of distribution lines.

(d) Most of the properties of Texas Electric Service Company, Texas Power & Light Company, and Texas Public Utilities Corporation are interconnected by means of transmission lines.

A further description of said subsidiary companies of defendant American Company, and of other and nonutility direct and indirect subsidiary companies of said American Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting or selling electric energy or gas
134 across state boundaries is given in Exhibit I, attached hereto and by reference made a part hereof.

33. Defendant Electric Power & Light Corporation, hereinafter called "Electric Company", is a holding company in that it owns more than ten per centum (the respective percentages being indicated after the name of each company) of the outstanding voting securities of the following defendant and of the following electric and gas utility companies which are conducting and for several years last past have conducted electric and/or gas utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

Arkansas Power & Light Company (90.22%) generates and distributes electric energy and distributes natural gas in Arkansas and both sells and purchases electric energy at state boundaries. Dallas Power & Light Company (69.98%) generates and distributes electric energy solely in Texas. Louisiana Power & Light Company (95.43%) generates and distributes electric energy and distributes natural gas in Louisiana and sells electric energy at state boundaries. Mississippi Power & Light Company (94.03%) generates and distributes electric energy and distributes natural gas in Mississippi and purchases electric energy at state boundaries. New Orleans Public Service, Inc. (95.08%) generates and distributes electric energy and distributes natural gas (in emergencies manufactured gas) solely in Louisiana. Defendant Utah Power & Light Company (92.38%) generates and distributes electric energy in Utah, Idaho, and Wyoming and is itself a holding company in that it owns all or substantially all of the outstanding voting securities of: (a) Utah Light and Traction Company, which owns but has leased to defendant Utah Power & Light Company electric generating plants and distributing systems in Utah; (b) The Western Colorado Power Company, which generates and distributes electric energy in Colorado; and (c) Bountiful Light and Power Company, which distributes electric energy in Utah.

Defendant Electric Company also owns all the outstanding voting securities of holding company defendant Power Securities Corporation, which is a holding company in that it owns 71.75% of the outstanding voting securities of defendant Idaho Power Company, which generates and distributes electric energy in Idaho and Oregon. Said defendant Idaho Power Company is also itself a holding company in that it owns all or substantially all of the outstanding voting securities of its subsidiary company, Nevada Power Company, which distributes electric energy in Nevada.

135

Defendant Electric Company also owns 61.58% of the outstanding voting securities of defendant United Gas Corporation, referred to in paragraph 34 hereof.

None of the electric properties of the companies mentioned in this paragraph 33 is physically interconnected or is capable of physical interconnection with the properties of the other companies mentioned in this paragraph 33 into an "integrated public-utility system" which under normal conditions may be economically operated as a single interconnected and coordinated system except that:

(a) The properties of defendants Idaho Power Company and Utah Power & Light Company and the properties of Utah Light and Traction Company, Bountiful Light and Power Company and Nevada Power Company are interconnected by means of transmission lines.

(b) The properties of Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service, Inc., are interconnected by means of transmission lines in the case of the Arkansas, Louisiana and Mississippi companies, and in the case of the New Orleans Public Service, Inc., by means of an emergency interconnection between the Louisiana company and the New Orleans company at the New Orleans generating station of the latter company.

A further description of said direct and indirect subsidiary companies of defendant Electric Company, and of other and non-utility direct and indirect subsidiary companies of said Electric Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting or selling electric energy or gas across state boundaries is given in Exhibit II, attached hereto and by reference made a part hereof.

34. Defendant United Gas Corporation, hereinafter called "United Company", is a holding company in that it owns all of the outstanding voting securities of its principal subsidiary company, defendant United Gas Public Service Company, which is engaged in the production of natural gas and oil and is a gas utility company engaged as such in the distribution of natural gas in Texas, Louisiana and Mississippi and also has natural gas pipe lines which extend into Alabama and Florida.

136

Defendant United Gas Public Service Company is itself a holding company in that it owns all or substantially all of the outstanding voting securities of: (a) defendant Houston Gulf Gas Company,

which is engaged in the production of natural gas and oil, is a gas utility company engaged as such in the distribution of natural gas in Texas and also is itself a holding company in that it owns all or substantially all of the outstanding voting securities of Houston Gas and Fuel Company, which distributes natural gas in Houston, Texas; (b) Northern Texas Utilities Company, which operates natural gas production and distribution facilities in Texas and (c) Southern Gas Utilities, Inc., which operates natural gas production and distribution facilities in Texas.

Defendant United Company also owns substantial stock interests in Mississippi River Fuel Corporation, operating in Louisiana, Arkansas, Missouri and Illinois and El Paso Natural Gas Company which with its subsidiary companies, operates in New Mexico, Texas, Arizona and the Republic of Mexico. Defendant United Gas Public Service Company also owns substantial stock interests in Monroe Gas Company and Natural Gas Company, Inc., operating in Louisiana. None of these four companies is operated as a part, or considered to be a part, of the natural gas system of said United Gas Public Service Company.

The natural gas properties of defendant United Gas Public Service Company and its several subsidiary companies above named comprise a single system for the production, transportation and distribution of gas, such system being fully interconnected either through transportation facilities of defendant United Gas Public Service Company and its subsidiary companies (or through transportation facilities belonging to other natural gas companies which have contracted to transport gas produced by said United Gas Public Service Company or its subsidiary companies), except in the case of a
137 portion of said system in the Amarillo field in northern Texas which is not yet physically interconnected, but which is capable of physical interconnection, with the remainder of said system.

A further description of said direct and indirect subsidiary companies of defendant United Company, and of other and non-utility direct and indirect subsidiary companies of said United Company, the business done by them, and the extent to which said companies, or any thereof, are engaged in transporting or selling gas across state or international boundaries is given in Exhibit III, attached hereto and by reference made a part hereof.

35. Defendant National Power & Light Company, hereinafter called "National Company", is a holding company in that it owns more than ten per centum (the respective percentages being indicated after the name of each company) of the outstanding voting securities of the following electric and gas utility companies which are conducting and for several years last past have conducted, electric and/or gas utility businesses, and incidentally in some cases, other businesses in the states hereinafter mentioned:

Birmingham Electric Company (100%) distributes and, in emergencies generates, electric energy solely in Alabama. Carolina

Power & Light Company (93.53%) generates and distributes electric energy in North Carolina and South Carolina and both purchases and sells electric energy at state boundaries. Holston River Electric Company (100%) distributes electric energy solely in Tennessee. Houston Lighting & Power Company (91.32%) generates and distributes electric energy solely in Texas. Memphis Power & Light Company (86.79%) generates and distributes electric energy and distributes natural gas (in emergencies manufactured gas) in the State of Tennessee and also both sells and purchases small amounts of electric energy at state boundaries. Roanoke River Power Company (100%) owns an undeveloped hydro-electric site and adjacent lands in Virginia and North Carolina and transmits certain electric energy through Virginia for delivery to the above named Carolina Power & Light Company. Tennessee Public Service Company (99.31%) generates and distributes electricity in the State of Tennessee and purchases electric energy at the Tennessee-North Carolina boundary.

West Tennessee Power & Light Company (99.99%) generates
138 and distributes electric energy and distributes natural gas (in emergencies manufactured gas) solely in Tennessee.

Defendant National Company also owns 99.66% of the outstanding voting securities of holding company defendant Lehigh Power Securities Corporation, hereinafter called "Lehigh Company", which has as subsidiary companies: (a) defendant Pennsylvania Power & Light Company, which generates and distributes electric energy, manufactures and distributes manufactured gas and distributes natural gas in Pennsylvania, effects certain interchanges of electric energy which may or does cross state boundaries, and in turn has as subsidiary companies: Lehighton Electric Light and Power Company, which distributes electric energy in Pennsylvania; Stanton Operating Company, which operates an electric generating plant in Pennsylvania, and Conestoga Transmission Company, which owns but has leased to defendant Pennsylvania Power & Light Company an electric transmission line in Pennsylvania; (b) Lehigh Valley Transit Company, which has filed a petition for reorganization under Section 77B of the Bankruptcy Act and is not a defendant herein, but which has a subsidiary company, defendant Easton Consolidated Electric Company, which in turn has a subsidiary company, The Edison Illuminating Company of Easton. Defendants Lehigh Company, Pennsylvania Power & Light Company, and Easton Consolidated Electric Company are holding companies in that they each own more than 10 per centum of the voting securities of the companies above designated as their respective companies.

None of the electric properties of the companies mentioned in this paragraph 35 is physically interconnected, or is capable of physical interconnection, with the properties of the other companies mentioned in this paragraph 35 into an "integrated public-utility system" which under normal conditions may be economically operated as a single interconnected and coordinated system, except that:

(a) Substantially all of the properties of defendant Pennsylvania Power & Light Company and its electric utility subsidiary companies and of Lehigh Valley Transit Company are interconnected by means of transmission lines.

(b) The properties of Carolina Power & Light Company, Tennessee Public Service Company, Holston River Electric
139 Company, and Roanoke River Power Company are interconnected (in part by means of transmission lines owned by other interests which have contracted to transmit electric energy for delivery to Carolina Power & Light Company) by means of transmission lines.

(c) The properties of Memphis Power & Light Company and West Tennessee Power & Light Company are interconnected by means of transmission lines.

A further description of said direct and indirect subsidiary companies of defendant National Company and of other and non-utility direct and indirect subsidiary companies of said National Company, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting or selling electric energy across state boundaries is given in Exhibit IV attached hereto and by reference made a part hereof.

In addition to the companies named in said Exhibit IV, defendant National Company also owns approximately 17% of the outstanding voting securities of Memphis Natural Gas Company, a natural gas pipe line company which transmits gas from Louisiana through Arkansas and Mississippi into Tennessee. The latter company is a controlled subsidiary company of another corporation in no way related to defendant National Company or its subsidiary companies.

36. Defendant American Gas is a holding company in that it owns all or substantially all of the outstanding voting securities of the following defendants and of the following electric utility companies which are conducting and for several years last past have conducted electric utility businesses and incidentally in some cases other businesses in the states hereinafter mentioned:

Defendant Appalachian Electric Power Company generates and distributes electric energy in Virginia and West Virginia, sells electric energy at wholesale in Tennessee and has subsidiary companies: Kentucky and West Virginia Power Company, Inc., which generates and distributes electric energy solely in Kentucky and Kingsport Utilities, Incorporated, which distributes electric energy solely in Tennessee. Defendant Atlantic City Electric Company generates and distributes electric energy solely in New Jersey and has a subsidiary company, Deepwater Operating Company,
140 which operates an electric generating plant in New Jersey.

Defendant The Ohio Power Company generates electric energy in Ohio and West Virginia, distributes electric energy solely in Ohio and has a subsidiary company, Beech Bottom Power Company, Inc., which operates an electric generating plant in West Virginia. De-

fendant The Scranton Electric Company generates and distributes electric energy solely in Pennsylvania and has a subsidiary company, Stanton Operating Company, which operates an electric generating plant in Pennsylvania. Indiana General Service Company generates and distributes electric energy solely in Indiana. Indiana & Michigan Electric Company generates and distributes electric energy in Indiana and Michigan. Kanawha Valley Power Company operates electric generating plants in West Virginia and sells the entire output of electric energy from such plants to defendant Appalachian Electric Power Company. Southern Ohio Public Service Company operates an electric generating plant in Ohio and sells the entire output of electric energy from such plant to defendant The Ohio Power Company. Wheeling Electric Company generates electric energy in West Virginia and distributes electric energy in West Virginia and Ohio.

Defendant Appalachian Electric Power Company is a holding company in that it owns all or substantially all of the voting securities of the companies above designated as its subsidiary companies. Defendants The Ohio Power Company, The Scranton Electric Company, and Atlantic City Electric Company are holding companies in that they each own 50 per centum of the voting securities of the companies above designated as their respective subsidiary companies.

The properties of all the companies mentioned in this paragraph 36 except those of defendant The Scranton Electric Company and defendant Atlantic City Electric Company are interconnected by means of transmission lines.

A further description of said subsidiary companies of the defendant American Gas and of other and non-utility direct or indirect subsidiary companies of said American Gas, the business done by them and the extent to which said companies, or any thereof, are engaged in transmitting electric energy across state boundaries is given in Exhibit V, attached hereto and by reference made a part hereof.

141 37. The investments of the holding company defendants in the securities of their subsidiary companies have amounted to, and now amount to, many millions of dollars.

The respective investments of the holding company defendants are in each case in common stock, and in certain cases are also in bonds, notes, debentures, or preferred stocks. The respective investments of the operating company defendants in their own properties and/or in the securities of their respective subsidiary companies amount (in addition to investments represented by securities held by the holding company defendants) in each case to millions of dollars represented by bonds, stocks, and other securities held by the public. Such securities so held by the public are widely distributed in the states in which said subsidiary companies respectively operate and in other states in the United States and in some instances in foreign countries.

38. Heretofore and for many years defendant Bond and Share maintained for the benefit of all, or substantially all, of the public utility operating subsidiary companies of the holding company defendants (other than those of defendant American Gas) a service organization which rendered advice and counsel on operating and financial problems, technical assistance in engineering, accounting, rate-making, commercial and other matters, secretarial and fiscal services which could be most advantageously conducted by a central organization. Said organization was maintained by defendant Bond and Share at its offices in New York City, and said defendant Bond and Share was compensated for said services by a fee based primarily on a percentage of operating revenues of the companies served.

Subsequent to the passage of said Holding Company Act and prior to the filing of the original Bill of Complaint herein, defendant Bond and Share transferred said service organization and assigned the contracts for such services (but not the contracts for services to the holding company defendants which were cancelled as alleged in paragraph 10 of the Answer) to its wholly-owned subsidiary company referred to in paragraph 30 hereof, to-wit, Ebasco Services, Incorporated, which has qualified to do business in the various states in which the public utility operating subsidiary companies served by it conduct substantial operations.

142 Said Ebasco Services, Incorporated, is now rendering and proposes to continue to render the services above set forth to the operating public utility subsidiary companies of the holding company defendants other than defendant American Gas. None of said services above described constitutes interstate commerce, but in the performance of said services the mails and facilities of commerce are used. Also, Ebasco Services, Incorporated, acting for its operating company clients for the purpose of placing orders in the names of said companies and not for itself or in its own behalf, negotiates contracts for the purchase of materials and supplies by such client operating public utility companies. In the rendition of these purchasing services, subsidiary companies of defendant American Gas have been, but no longer are, permitted to make purchases and receive the benefits arising under certain, but not all, of these contracts. Such purchases by said client operating companies include the purchase of materials and supplies which move directly in interstate commerce from the manufacturer or wholesaler to such operating companies, and Ebasco Services, Incorporated, arranges for the shipment or transportation of a part of such materials and supplies. In the performance of services rendered by said Ebasco Services, Incorporated, there are employed approximately 350 individuals, of whom only approximately ten are employed in the Purchasing Department thereof; and while the volume of purchases by client companies is large, the purchasing service rendered by said Ebasco Services, Incorporated, in a minor and severable part of the total services performed by it.

Included among the operating public utility companies to which defendant Bond and Share rendered, and to which Ebasco Services, Incorporated, now renders, services as aforesaid, are all or substantially all of those named above (other than the subsidiary companies of defendant American Gas), including those which operate in countries entirely without the boundaries of the United States, those which operate entirely within a single state of the United States, and those which operate in more than one state and in the operations of which electric energy and gas are transmitted across state boundaries. For the services rendered to such operating public utility companies, service fees have been and are charged,
143 based upon the operating revenues of the companies served, and said fees, which amount on the present basis to approximately 1.1 per centum of the aggregate operating revenues of such public utility companies operating in the United States, have yielded and may yield on such basis an aggregate amount in excess of the cost of rendering such services. Such fees may enter into the rates locally charged within the several states for public utility services rendered by such companies and are subject to the jurisdiction of the proper state authorities in the several states. Said fees are not based upon and have no relation to the generation or transmission of electric energy or gas, whether across state boundaries or otherwise.

39. Briefly, the intercorporate relations and the system of operations of defendant Bond and Share and the holding company defendants are as follows:

Defendant Bond and Share in its own corporate capacity owns the following percentages of the voting securities of the holding company defendants, to wit: defendant American Company, 20.70 per centum; defendant Electric Company, 47.20 per centum; defendant National Company, 46.56 per centum; defendant American Gas, 17.51 per centum; defendant United Company, 7 per centum; defendant Power Securities Corporation, none; defendant Lehigh Company, none; and defendant Easton Consolidated Electric Company, none; and has such degree of influence and control over said companies as is inherent in such stock ownership. Such influence and control is exercised by voting the stock owned by defendant Bond and Share, and not by common officers, directors, or employees, or direct participation in management of such other defendants. A statement of the capitalization of said holding company defendants and the voting stock ownership therein of defendant Bond and Share is set forth in Exhibit VI, attached hereto and by reference made a part hereof. Defendant Bond and Share is not a public utility company. It is not engaged in commerce with foreign nations or among the several states in the sale of electric energy or gas, or otherwise. Although defendant Bond and Share uses the mails and other facilities of commerce as an incident to its business, its sole corporate business (since the transfer of its service organization as stated in paragraph 38 hereof) is the ownership of securities in the

144 above mentioned companies and the ownership of its other investments and the conduct of matters incidental thereto, such as the occasional lending of money, the receipt and disbursement of interest and dividend payments, and the like.

There are no directors, officers, or employees common to the defendant Bond and Share or said Ebasco Services, Incorporated, and the other defendants or their subsidiary companies, except as follows: the Chairman of the Board of Directors of the defendant Bond and Share is Chairman of the Board of Directors of defendant American Gas, and one other individual is a director of both said companies and a vice-president of defendant Bond and Share.

Of the holding company defendants above mentioned, American Company, Electric Company, National Company, United Company, Power Securities Corporation, and Lehigh Company do no other business and perform no other function than that of companies holding for investment the common stock and other securities of their subsidiary companies above described, voting such stock for the election of directors and such other corporate purposes as require stockholders vote, the occasional lending of money or lending of credit to said operating companies, collecting interest and dividends and paying same out to their creditors and stockholders. None of them is a public utility company and none of them is engaged in commerce with foreign nations or among the several states in the sale of electric energy or gas, or otherwise. They use the mails or other facilities of commerce only incidentally in furtherance of such business. They exercise voting control through stock ownership of their subsidiary operating companies, which are separately officered, staffed, directed, and financed. The operating companies subsidiary to said holding companies are engaged primarily in the business of distributing electricity or gas to the public at retail under franchises or other authority of the states in which they operate. None of the officers, directors, or employees of any of the subsidiary companies of the foregoing holding company defendants is an officer, director, or employee of said holding company defendants, and the operations of each of said subsidiary companies are conducted entirely separately, and are distinct from the operations of said holding company

145 defendants. Defendant Easton Consolidated Electric Company is primarily a holding company with respect to the securities of transportation companies, but also holds the securities of The Edison Illuminating Company of Easton, which owns, but does not operate, an electric distribution property as described in Exhibit IV. Said defendant's business is generally similar to that of the holding company defendants above described. It transacts no business whatever in interstate commerce.

Defendant American Gas, in addition to owning the stocks of the companies hereinabove named as its subsidiary companies and exercising voting control of said companies, furnishes, through use of its own personnel, to its subsidiary operating utility companies manage-

rial, financial, accounting, auditing, commercial, purchasing, valuation, engineering, insurance, statistical, and other services. Various officers and directors of defendant American Gas also act as officers and directors of its public utility subsidiary companies, performing for such subsidiary companies the duties of the offices held and supplementing the local operating organizations of such subsidiary companies, which organizations are separate and distinct from those of defendant American Gas. Defendant American Gas is not a public utility company. It is not engaged in commerce with foreign nations or among the several states in the sale of electric energy or gas, or otherwise.

In addition to stock ownership in the public utility companies referred to in paragraphs 32 to 36, the holding company defendants and the operating company defendants, as well as certain of their subsidiary companies, own common stock, and, in some cases, other securities of subsidiaries which are not public utility companies as defined in said Holding Company Act.

40. As fully set forth in said Exhibits I, II, III, IV, and V the public utility companies therein and hereinabove described are, with few and unimportant exceptions, engaged primarily in the generation and distribution of electric energy, or the production and distribution of gas, within the states in which they respectively operate. The generation of such electric energy or the production of such gas and
146 the distribution thereof to the public within the several states is not and does not directly affect commerce between the states and is wholly within the jurisdiction and control of the states and the regulatory authorities thereof, within which such energy or gas is generated, produced, or distributed. Such companies as transmit electric energy or gas across state boundaries do so ordinarily and primarily for distribution at retail to customers of such companies within the states to which such energy or gas is transmitted. Such transmission of electric energy or gas across state boundaries does not constitute a sale or sales in interstate commerce and is only subject to Federal jurisdiction and regulation to the extent, if any, that such transmission across state boundaries impairs or tends to impair the safety, health, or morals of any person. Sales of electric energy or gas across state boundaries are a minor part of the business done by said public utility companies, and in practically every case a minor part of the business done by the particular company making such sales, and comprise a business which is severable from said companies' intrastate business. Said companies are doing a predominantly intrastate business within the states in which they operate subject to the jurisdiction of such states and of the regulatory authorities thereof and not to Federal jurisdiction.

41. None of the defendants has been exempted, or, under the terms of said Act, is entitled to apply for exemption from any provision of said Act under Section 3 or any other provision thereof providing for the exemption of holding companies except that the

following defendants, to wit: (a) The Washington Water Power Company in the American Company group; (b) Pennsylvania Power & Light Company, and Easton Consolidated Electric Company, in the National Company group, and (c) Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, and Atlantic City Electric Company, in the American Gas group, are temporarily exempted as holding companies from the provisions of the Act under the terms of a rule of the plaintiff set forth in Exhibit A attached to the Bill herein, but said defendants have no means of knowing whether said exemption will continue after February 2, 1936. Further, said exemption exists and will
147 continue in the sole discretion of the plaintiff, all without judicial review, except upon issues of law, decisions of the Commission as to fact being conclusive if supported by substantial evidence.

All of the holding company defendants and the remaining companies mentioned in paragraphs 32 to 36 hereof are subsidiary companies of the defendant Bond and Share and of their respective holding companies within the meaning of Section 2 (a) (8) of said Holding Company Act and none of said companies is entitled to exemption or to claim exemption as a subsidiary company under the terms of Sections 2 (a) (8) and 3 (b) of said Act, or otherwise, or any other section thereof. Exemption of said holding and operating company defendants as holding companies would be comparatively valueless to them as they would remain subsidiary companies subject to all, or practically all, the provisions of said Act.

42. In the course of their business, defendant Bond and Share and its subsidiary service company, Ebasco Services Incorporated, and the holding company and operating company defendants use the United States mails and the facilities of commerce for various lawful purposes, including the transportation of their officers and employees and the transmission of lawful matter affecting the business of said companies and not in any way tending to impair the safety, health, or morals of any person; said matter does not endanger the mails or the facilities of transmission thereof or the facilities of commerce, nor is such matter calculated to, nor does it, defraud or otherwise injure or offend the sender or recipient thereof, or any other person or corporation, directly or indirectly.

43. Section 4 (a) of said Holding Company Act provides that after December 1, 1935, unless a holding company is registered under Section 5 of said Act, it shall be unlawful for such holding company, directly or indirectly—

"(1) to sell, transport, transmit, or distribute, or own or operate any utility assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce;

(2) by use of the mails or any means or instrumentality of
148 interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction con-

tract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

(5) to engage in any business in interstate commerce; or

(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5), inclusive, of this subsection."

The activities forbidden by paragraphs (3), (4), and (6) of said Section 4 (a) are essential to the normal and ordinary conduct of the business of each of the defendants and the use, conservation, and development of its properties. It is essential and necessary that each of the defendants, to maintain the integrity of its property and investments, own, control, and hold with power to vote, the securities of its subsidiary companies which do the things prohibited in paragraphs (1) to (5), inclusive, of said Section 4 (a) as and to the extent hereinbefore alleged.

It is necessary for defendants, Appalachian Electric Power Company, The Ohio Power Company, Utah Power & Light Company, Idaho Power Company, Pacific Power & Light Company, and The Washington Water Power Company, themselves to transmit electric energy across state boundaries for distribution in states in which they operate, as hereinbefore averred.

It is necessary for defendants, The Montana Power Com-
149 pany, Nebraska Power Company, and Pennsylvania Power & Light Company, themselves to maintain and operate transmission lines to points at or near state boundaries, as hereinbefore set forth, where electric energy is sold to, interchanged with, or purchased from, subsidiary companies or non-associate electric utility companies.

It is necessary for defendant United Gas Public Service Company to transport natural gas across state boundaries for distribution in states in which it operates, as hereinbefore averred.

It is necessary for defendant American Gas to use the mails and facilities of interstate commerce to perform the services which it renders to its subsidiary companies, as alleged in paragraph 39 hereof.

Section 4(b) of said Act provides as follows:

"(b) Every holding company which has outstanding any security any of which, by use of the mails or any means or instrumentality of interstate commerce, has been distributed or made the subject of a public offering subsequent to January 1, 1925, and any of which security is owned or held on October 1, 1935 (or, if such company is not a holding company on that date, on the date such company becomes a holding company) by persons not resident in the State in which such holding company is organized, shall register under Section 5 on or before December 1, 1935, or the thirtieth day after such company becomes a holding company, whichever date is later."

Said Section 4 (b) is applicable to each of the defendants, except defendant Easton Consolidated Electric Company, since such defendants have distributed and made the subject of public offering substantial amounts of their respective securities by use of the mails or means or instrumentalities of interstate commerce subsequent to January 1, 1925, and substantial amounts of said securities were owned or held on October 1, 1935, and are so owned or held on the date hereof by persons not resident in the respective states in which such defendants are respectively organized. By reason of the facts in this paragraph recited such defendants are directed by the terms of said Section 4 (b) to register under Section 5 of said Act on or before December 1, 1935, even though they do not now engage, and may not in the future engage, in any commerce with foreign countries or among the several states.

150 An unregistered holding company which engages in any of the transactions prohibited by Section 4 (a) is within the purview of the following provisions of Section 26 (b):

"(b) Every contract made in violation of any provision of this title or of any rule, regulation, or order thereunder, and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, regulation, or order."

Each of the defendants has existing many contracts, relationships, and practices, the performance of which involve violations of provisions of said Act, and which may also be subjected to rules, regulations, or orders of plaintiff Commission which would likewise be violated. Among such contracts and relationships are those between defendant Bond and Share's wholly-owned subsidiary, Ebasco Services Incorporated, and others of the defendants and their sub-

sidiaries for the performance of services, and like arrangements between defendant American Gas and its subsidiaries. Such contracts and relationships are of value to the parties thereto, and their termination would result in monetary losses, and losses in economy and efficiency of operation.

An unregistered holding company and its officers and employees are also within the purview of the following penalty provisions of Section 29:

"Any person who wilfully violates any provision of this title or any rule, regulation, or order thereunder (other than an order of the Commission under subsection' (b), (d), (e), or (f) of section 11), * * * shall upon conviction be fined not more than $10,000 or imprisoned not more than two years, or both, except that in
151 the case of a violation of a provision of subsection (a) or (b) of section 4 by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding $200,000; but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no knowledge of such rule, regulation, or order."

Each of the defendants' officers and employees are engaged in the discharge of duties and in the performance of contracts which may subject them to the fines and imprisonment prescribed in said section; the acts required of them in the normal discharge of their duties, subject to the penalties of said section, are many, numerous and continuous; the penalties of fines and imprisonment for successive and different acts are, or may be contended to be, cumulative, as a result of which the officers and employees of each of the defendants are presently threatened with liability of fine and imprisonment for the discharge of their normal duties, performance of company contracts, and the normal conduct of the business operations of the respective defendants; such threat or liability of fine and imprisonment has a deterring and demoralizing effect upon personnel of the defendants, and, unless relief is granted therefrom by decree in this cause, constitutes an irreparable injury to the defendants and their properties and business.

44. Section 5 (a) of said Holding Company Act provides that on or at any time after October 1, 1935, any holding company may register by filing with the plaintiff Securities and Exchange Commission a notification of registration, in such form as said Commission may by rules and regulations prescribe, and such holding company shall be deemed to be registered upon receipt by said Commission of such notification of registration. Section 5 (b) of said Act provides that it shall be the duty of every registered holding company to file with the said Commission, within such reasonable time after registration as said Commission shall fix, a registration statement in such form as the said Commission shall prescribe, and that such registration statement shall include:

"(1) such copies of the charter or articles of incorporation, partnership, or agreement, with all amendments thereto, and the bylaws, trust indentures, mortgages, underwriting arrangements, voting-trust agreements, and similar documents, by whatever name known, of or relating to the registrant or any of its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers;

(2) such information in such form and in such detail relating to, and copies of such documents of or relating to, the registrant and its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

(A) the organization and financial structure of such companies and the nature of their business;

(B) the terms, position, rights, and privileges of the different classes of their securities outstanding;

(C) the terms and underwriting arrangements under which their securities, during not more than the five preceding years, have been offered to the public or otherwise disposed of and the relations of underwriters to, and their interest in, such companies;

(D) the directors and officers of such companies, their remuneration, their interest in the securities of, their material contracts with, and their borrowings from, any of such companies;

(E) bonus and profit-sharing arrangements;

(F) material contracts, not made in the ordinary course of business, and service, sales, and construction contracts;

(G) options in respect of securities;

(H) balance sheets for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(I) profit and loss statements for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(3) such further information or documents regarding the registrant or its associate companies of the relations between them as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers."

153 Section 5 (c) of said Act provides that the Commission may permit a registrant to file a preliminary registration statement without complying with the provisions of Section 5 (b), but that every registrant shall file a complete registration statement with the said Commission within such reasonable period of time as the Commission shall fix, but not later than one year after the date of registration.

45. In order to comply with the above described provisions of Section 5 of said Holding Company Act, it would be necessary for

each of the defendants to expend very substantial sums of money to comply with the provisions of the Act with respect to registration. In order to accomplish complete registration in compliance with the foregoing statutory requirements, the defendant Bond and Share itself would be required to expend not less than $50,000; the defendant American Gas and its subsidiary companies, the operating company defendants Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, and Atlantic City Electric Company, would be required to expend in the aggregate not less than $60,000; the defendant American Company and its subsidiary companies, the operating company defendants The Montana Power Company, Nebraska Power Company, Pacific Power & Light Company, and The Washington Water Power Company, would be required to expend in the aggregate not less than $85,000; the defendant Electric Company and its subsidiary companies, the holding company defendants Power Securities Corporation and United Gas Corporation and the operating company defendants Idaho Power Company, Utah Power & Light Company, United Gas Public Service Company, and Houston Gulf Gas Company, would be required to expend in the aggregate not less than $60,000; the defendant National Company and its subsidiary companies, the holding company defendants Lehigh Company and Easton Consolidated Electric Company and the operating company defendant Pennsylvania Power & Light Company would be required to expend in the aggregate not less than $70,000.

46. By the terms and provisions of said Holding Company Act, each of the defendants, or any other holding company as therein defined, upon registration loses the status of a non-registered
154 holding company and subjects itself to the jurisdiction of plaintiff Securities and Exchange Commission. Said Act attempts to make registration not merely a means for getting information, but the acceptance of a license under which each of the defendants, or any holding company, is permitted to do those things prohibited by Section 4 (a) but necessary for the conduct of its ordinary business operations, only upon the terms and conditions prescribed by subsequent paragraphs of the Act, as hereinafter alleged, and generally at the will and discretion of said Commission and not as of right. The whole mechanism of the control of the operations of the defendants by plaintiff Securities and Exchange Commission is based, by the provisions of said Act, upon registration thereunder.

Immediately upon said registration and in consequence thereof, it will be and become unlawful by the terms of said Holding Company Act for any of the defendants, without the prior approval of plaintiff Securities and Exchange Commission, or in contravention of any rule, regulation, or order from time to time by it deemed necessary or appropriate: (1) to issue or sell any long term security (which is defined in Sec. 2 (a) (16) to include any note, draft, stock,

bond, debenture, receiver's or trustee's certificate, or certificate of deposit for a security) of any such company (Sec. 6 (a)); (2) to exercise any privilege or right to alter the priority, preference, voting power, or other right of the holders of any outstanding security of such company (Sec. 6 (a)); (3) to acquire, directly or indirectly, any securities or utility assets or any other interest in any business (Sec. 9 (a) (1)); (4) to lend or extend its credit to or indemnify any company in the same holding company system (Sec. 12 (b)); (5) to declare or pay any dividend on any security of such company or to acquire, retire, or redeem any security of such company (Sec. 12 (c)); (6) to sell any security which such company owns of any public utility company or any utility assets (Sec. 12 (d)); (7) to solicit any proxy; power of attorney, consent, or authorization regarding any security of such company or a subsidiary company thereof (Sec. 12 (e)); (8) to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under said Act with any company in the same holding company system or with any affiliate of a company in such holding company system (Sec. 12 (f)); or (9) to keep its accounts, correspondence, memoranda, papers, books, and other records (Sec. 15 (a) and (e)).

155

Said Holding Company Act further provides, in Sec. 12 (a), that it shall be unlawful for a registered holding company to borrow money from any subsidiary company or from any public utility company in the same holding company system, and, in secs. 13 (a) and 13 (b), that, after April 1, 1936, it shall be unlawful for any registered holding company to take any step in the performance of any service, sales, or construction contract with any associate company which is a public utility company or a mutual service company, or for any subsidiary company of a registered holding company to take any step in the performance of any such contract with an associate company, except in accordance with such terms and conditions and subject to such limitations and prohibitions as plaintiff Commission shall prescribe.

Both in the matters hereinabove mentioned, and in the further provisions of the Act, particularly those of Sections 14 to 29, inclusive, under which plaintiff Commission is authorized to require registered holding companies to make various and sundry reports; to prescribe accounting systems; to make minute examinations of all correspondence, memoranda, papers, books, and records of registered holding companies and their subsidiary companies and affiliates; to investigate the business and financial condition and practices of registered holding companies and their subsidiary companies; to compel attendance of witnesses; to require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records which said Commission deems relevant and material; and to bring suits to enforce compliance with the provisions of the Act applicable to such registered holding companies, the entire business of each of

the defendants would be subjected by registration to complete and virtually unlimited control of plaintiff Securities and Exchange Commission, and the actual management and direction of the business and property of defendants would be transferred from the duly authorized and responsible representatives of the owners thereof, to wit, the officers and directors of such companies, to said plaintiff Commission.

156 The judicial review provided for orders of said Commission by Section 24 (a) of said Act is inadequate and incomplete, and is limited to review upon the law, as by the terms of said section, "The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive."

47. Following such registration and in consequence thereof, it will be and become the duty of plaintiff Securities and Exchange Commission by the terms of Section 11 of said Act, as soon as practicable after January 1, 1938, to cause each of the defendants to take such action as said Commission shall find necessary to limit the operations of the holding company system, of which each such defendant would be then a part, to a "single integrated public-utility system", subject to a finding by said Commission of the existence of certain arbitrarily defined conditions which are not available to defendants Bond and Share, Electric Company, National Company, and American Company, since their respective operating utility companies described in paragraphs 32, 33, 34, 35, and 36 hereof do not in any case comprise a "single integrated public-utility system" as defined in Section 2 (a) (29) (meaning thereby one whose utility assets are physically interconnected or capable of physical interconnection) but consist of many such systems. By the terms of said Section 11, said Commission will be required to cause the disintegration, dismemberment, or reorganization of each such defendant's so-called holding company system so as to confine each such defendant's holdings to a single integrated public utility system, as provided in said Section 11.

Said Section 11 further provides:

"That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

157 (C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation."

Of the subsidiary operating public utility companies of defendant American Gas, defendants Appalachian Electric Power Company and The Ohio Power Company, together with defendant American Gas' direct subsidiary companies, Indiana & Michigan Electric Company, Indiana General Service Company, Wheeling Electric Company, Southern Ohio Public Service Company, and Kanawha Valley Power Company may constitute "a single integrated public-utility system" within the meaning of said Section 11 under the definition in Section 2 (a) (29) of said Act of an "Integrated public-utility system" as:

"* * * a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation."

The utility properties of defendants The Scranton Electric Company and Atlantic City Electric Company are not as to each other, nor as to the system above described, a single "Integrated public-utility system" within the definition in Section 2 (a) (29), but are "additional integrated public-utility systems" within the meaning of Section 11.

As a result of the foregoing, defendant American Gas' right to retain its stock ownership of any of the above companies as part of its holding company system is dependent upon plaintiff Commission's findings under Section 11, which findings are factually conclusive, and subject to no judicial review, if supported by substantial evidence.

158 The defendant American Gas and its subsidiary companies have no present means of knowing whether and the extent to which plaintiff Commission may leave the defendant American Gas in possession, ownership, or control of any of said public utility systems, as hereinabove described and particularly the systems of The Scranton Electric Company and Atlantic City Electric Company. Such uncertainty will exist until at least January 1, 1938, and thereafter until said Commission, after a hearing, may enter its order thereon.

The respective properties of the subsidiary public utility companies of the holding company defendants United Company, Power Securities Corporation, Lehigh Company and Easton Consolidated Electric Company, and of each of the operating company defendants themselves may constitute physically interconnected properties all as hereinbefore in paragraphs 32, 33, 34, 35, and 36 hereof alleged, within the meaning of Section 11 which submits to the jurisdiction of plaintiff Commission the conclusive determination of the factual

questions embodied in the definition in Section 2 (a) (29) of said Act. Such defendants have no present means of knowing whether and the extent to which said Commission will find that the respective properties operated by them and their subsidiary companies constitute integrated public utility systems. Such uncertainty will exist until at least January 1, 1938, and thereafter until said Commission, after a hearing, may enter its order thereon.

Section 11 of the Act further imposes upon plaintiff Commission the duty of taking such steps as it shall find necessary to insure that the corporate structure or continued existence of any company in the holding company system of each or any of the defendants or any of its subsidiary companies does not, in the opinion of said Commission, unduly or unnecessarily complicate the corporate structure, or unfairly or inequitably distribute the voting power among security holders, of such holding company system.

The provisions of said Section 11 constitute the primary and basic objective of said Holding Company Act. Section 1 (c) thereof provides—

"* * * it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as
159 enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title."

The enforcement of said Section 11 and the effectuation of the policy set forth in Section 1 (c), as above quoted, will cause, arbitrarily by legislative fiat, and without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, the forced sale, or other form of disposal, and the consequent sacrifice of the values of defendant Bond and Share's assets, and of the respective assets of each of the holding company defendants Electric Company, National Company, and American Company, and of said defendants' respective investments in the stock of the holding companies and public utility operating companies owned by them as hereinbefore described. All of the various provisions of said Act hereinabove set forth are framed with a view to the effectuation of the policy set forth in said Section 1 (c), to be accomplished through the mandatory provisions of said Section 11. Said sections, and the threatened enforcement thereof by the plaintiff Commission and by the cross-defendants, as hereinafter alleged, constitute an immediate and present irreparable damage and injury, and subject defendant Bond and Share and the holding company defendants Electric Com-

pany, National Company, and American Company to a present threat of dismemberment, dissolution, or reorganization, presently destroy their value as living going concerns, destroy their credit and the values of their securities and holdings, prevent their development through the making of such further investments in the securities of their subsidiary companies as are necessary to conserve and develop their business, threaten their organizations with disruption and destruction, and, if enforced, leave them with no alternative but to dissolve, go out of business, and sacrifice their investments for anything that they may bring.

160 Similarly, said sections of the Act and the threatened enforcement thereof by the plaintiff Commission and by the cross-defendants, as hereinafter alleged, also constitute an immediate, present, and irreparable damage and injury, and subject the holding company defendants American Gas, United Company, Power Securities Corporation, Lehigh Company, and Eastern Consolidated Electric Company and each of the operating company defendants to a present threat of possible dismemberment, dissolution, or reorganization; tend to depreciate or destroy their values as living going concerns; tend to depreciate or destroy their credit and the values of their securities and holdings; tend to alter or prevent their development through the making of such further investments in the securities of their subsidiary companies as are necessary to conserve and develop their business; threaten their organizations with disruption or destruction, and, if enforced by declaring the holding company system of any of said defendants not to be a "single integrated public-utility system", leave each such defendant with no alternative but to reorganize its properties and business on such basis as said Commission may permit and to sacrifice the investments which it may be required to dispose of for anything that they may bring.

48. Said Holding Company Act is not in truth and in fact a law, but said pretended statute is void and unconstitutional and of no force and effect for the following among other reasons, to-wit:

(1) None of the provisions of said Holding Company Act, in its application to the defendants constitutes regulation of either interstate or foreign commerce within Section 8 of Article I of the Constitution of the United States, which grants to Congress the power to regulate commerce with foreign nations and among the several states, and the meaning, purpose, and effect of all of the provisions of said Holding Company Act hereinbefore specifically recited is to prohibit or regulate the performance of acts which, in so far as they may be performed by the defendants, do not constitute commerce with foreign nations or among the several states, or directly affect such commerce. In so far as any of the companies sought to be regulated by said Act, and specifically any defendant, may be held to be in any respect engaged in interstate commerce, or in so far as any

161 of the matters or things sought to be regulated by said Act may be held to constitute regulations of interstate commerce, as

applied to any company, and particularly any defendant herein, said Act is void, and in excess of the powers of the Congress, in that it attempts to regulate, without distinction and by inseparable provisions, both companies engaged in interstate commerce, and companies not engaged in interstate commerce, and acts of interstate commerce and acts not of interstate commerce.

(2) Said Act, by its language, purpose, and effect, attempts to regulate matters not within any of the powers conferred upon the Congress by the Constitution of the United States, and said Act, and all the provisions thereof, particularly those hereinbefore recited in paragraphs 43, 46, and 47 hereof, are in violation of the Tenth Amendment to the Constitution of the United States.

(3) Said Act is an unlawful delegation of legislative powers to plaintiff Commission, and violates Section 1 of Article I of the Constitution of the United States by which legislative powers are granted to the Congress, in that no adequate standards are provided in the Act by which the action of the Commission is to be guided or controlled; by the terms of said Act it is provided that the action of said Commission shall be such as in its uncontrolled discretion it may find necessary or appropriate "in the public interest or for the protection of investors or consumers" or "to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder."

(4) The provisions of said Act which deny to non-complying companies right to use the mails or facilities of commerce in ordinary business transactions are in excess of the powers of Congress granted by Section 8 of Article I of the Constitution of the United States either to regulate commerce or to establish post offices and post roads, and constitute a deprivation of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(5) The provisions of the Act hereinbefore referred to, particularly those enumerated and referred to, in paragraphs 43, 44, 46, and 47 (and the enforcement thereof as set forth in paragraphs 50 and 51) hereof, which purport to, and if enforced will, take from
162 defendants the right and power to acquire, maintain, administer, and dispose of their property, and to exercise ordinary proprietary rights with respect thereto, and vest in plaintiff Commission control of such property, its acquisition and disposition, including even the capital and corporate reorganization of defendant Bond and Share and all the other defendants and the redistribution of voting power among the security holders of their respective subsidiary companies, deprive such defendants of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States and also deprive such defendants of rights, powers, privileges, and immunities conferred upon them under and pursuant to the laws of the states in which they were respectively organized and constitute an encroachment upon

the reserved powers of said states, in violation of the Tenth Amendment to the Constitution of the United States.

(6) The provisions of Section 4 (a) (2) and (6) of said Act which prohibit defendants Bond and Share and American Gas, as unregistered holding companies, by use of the mails or any means or instrumentality of interstate commerce, from taking any step in the performance of any service, sales, or construction contract or from owning securities of any subsidiary company taking any such step and the provisions of Section 13 (a) and (b) of said Act which prohibit said defendants after April 1, 1936, from taking directly any step in the performance of any such service, sales, or construction contract or from taking any such step through a subsidiary company except at cost, and then only in accordance with terms, conditions, and limitations prescribed by plaintiff Commission, destroy contract rights, presently threaten to disrupt and destroy the valuable service organizations now maintained by said defendant American Gas and by defendant Bond and Share's wholly-owned subsidiary company, Ebasco Servicies, Incorporated, and will deprive said defendants of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(7) In limiting review of the orders and rules of plaintiff Commission by providing that upon such review the findings of said Commission as to the facts, if supported by substantial evidence, shall be conclusive, the Act deprives defendants of their right to a
163 judicial determination of all questions of fact affecting their constitutional rights, or affecting the jurisdiction of said Commission to exercise the powers attempted to be delegated to it, and deprives defendants of their property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(8) The provisions of Section 29 of said Act, quoted in paragraph 43 hereof, impose penalties for violation of said Act upon officers and employees of defendants, and upon defendants themselves, so excessive as to coerce compliance by defendants with the unlawful provisions of said Act, and the rules, regulations, and orders of plaintiff Commission which may be made thereunder, and thus deny defendants their day in court, deprive defendants of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States and will impose excessive fines and inflict cruel and unusual punishments upon defendants in violation of the Eighth Amendment to the Constitution of the United States.

(9) The disabilities and prohibitions imposed on nonregistered holding companies by Section 4, and the requirement of registration imposed by Section 5 of the Act, with the ensuing consequences of such registration imposed by subsequent sections hereinbefore enumerated, are referable to no Federal standard or constitutional power of the Federal government, but are arbitrary, unreasonable, and dis-

criminatory, in that they impose, upon an arbitrarily selected group of companies in a class, disabilities, prohibitions, duties, and limitations to which other companies in the same class are not subject, but from which they are exempt. Such arbitrary classification constitutes a deprivation of the liberty and property of the companies subjected thereto without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

(10) By the act of registration of holding companies attempted to be imposed by Sections 4 and 5 of said Act, jurisdiction is sought to be conferred upon and acquired by the plaintiff Commission to control, regulate, and manage not only the registering holding company, but also each and every of its subsidiary utility and
164 non-utility companies, as defined in said Act, irrespective of whether or not said holding company or said subsidiary companies may do any business in interstate commerce, or may otherwise be subject to Federal control and regulation. Said Act, therefore, seeks to establish Federal control of matters, persons, corporations and things in excess of the power of the Federal government under the commerce clause or any other clause of the Constitution of the United States, invades the reserved rights of the states and is in violation of the Tenth Amendment to said Constitution.

49. Being advised by counsel and believing that said Holding Company Act is wholly unconstitutional and void, and of no effect, and that registration thereunder would prejudice defendants' rights to attack the validity and constitutionality of the Holding Company Act and to full and adequate judicial relief, and adequate protection against the attempted unlawful interference by plaintiff Commission and by the Commissioners with defendants' property and business, and the imposition or attempted imposition of the penalties prescribed by the Act for refusal to conform thereto, and would involve defendants in a multiplicity of suits, defendants are constrained in protecting their constitutional rights to refrain and have refrained from registration, and do not propose, nor intend, voluntarily to register under said Act, as provided by Section 5 thereof, nor otherwise voluntarily to turn over the management of their properties or business from their boards of directors to the asserted jurisdiction of said Commission involved in such registration.

50. Defendants are informed and believe and therefore allege that plaintiff Securities and Exchange Commission, and the cross-defendants, Commissioners, Attorney General and Postmaster General, asserting their intention to enforce the provisions of the Act, have released through the press statements to the effect (quoting from the release of the Attorney General) that:

"In enforcing the Act it is proposed promptly to institute civil proceedings against one or more large and important companies who may fail to register to enforce compliance with its provisions and
to seek decisions from the Supreme Court sustaining the
165 validity of the Act. In the meanwhile it is not proposed to

institute criminal proceedings, and if later it should become necessary to institute criminal proceedings against any company, it is not the intention of this department to seek to exact penalties for earlier offenses which might unduly penalize the investors in the offending company."

and (quoting from the official Postal Bulletin dated December 5, 1935, signed by the Postmaster General):

"Whatever may be the authority, if any of the Postmaster General to exclude from the mails matters sent in violation of the act, the Postmaster General does not intend to exclude any company from using the mails, at least not before the validity of the act is judicially determined by the Supreme Court. You will accordingly take no steps to exclude unregistered holding companies from the use of the mails."

Such statements of the Attorney General and the Postmaster General, while accepted by the defendants, do not estop said officials, or their successors in office, from instituting such proceedings, and express merely their present intention, which they may withdraw at any time. The Act imposes upon plaintiff Securities and Exchange Commission and the Commissioners and upon the Attorney General and the Postmaster General (and through them upon United States District Attorneys and Postmasters) the legal duty of enforcement, and the defendants are informed and believe and, therefore, allege on information and belief that the Attorney General himself does not presently or without further notice propose to commence or institute any civil or criminal proceedings to enforce such Holding Company Act, but has reserved the right in his sole discretion as to time and manner to proceed with such enforcement of such Act, and that the Postmaster General does not presently or without further notice propose to exclude any unregistered holding company from using the mails or to exclude from the mails matter sent in violation of said Holding Company Act, but has reserved the right in his sole discretion as to time and manner to proceed with such enforcement of such Act.

But whether or not enforced by the imposition of either
166 criminal or civil penalties, or one or a number of suits to collect fines and penalties, the existence of the provisions of such Act on the statute books, as hereinbefore alleged, constitutes an immediate, present, and irreparable threat, damage and injury to defendants' property, and causes an immediate impairment of the value of said property and of defendant's businesses and casts a cloud on defendants' title to such property, and questions the validity of substantially every act and contract of defendants until the invalidity of such Act shall be judicially declared, all as more fully hereinbefore alleged.

Defendants are further informed and believe, and therefore allege, that, subject to the foregoing statements of immediate intention, and

in their sole discretion as to time and manner, the plaintiff Securities and Exchange Commission, the Commissioners, the Attorney General, and the Postmaster General, under color of the pretended authority of said Holding Company Act contending that such Act validly confers authority upon them, are combining and conspiring together and with each other to injure, and are threatening to injure, defendants, and will, unless restrained by this Court of Equity, proceed so to do in the following manner:-

(a) The plaintiff Securities and Exchange Commission intends, and is threatening, to issue rules, regulations, and orders applicable to defendants providing for the form and the contents of registration statements to be filed with said Securities and Exchange Commission, together with a vast number of schedules, appendices, and other documents to be attached thereto, all as provided in Section 5 (b) of said Holding Company Act and more particularly described in paragraph 44 hereof; said plaintiff Commission further intends and threatens, if defendants file with said Commission notifications of registration, to prevent, control, and regulate, subject to its arbitrary discretion, each and every act of defendants and their subsidiary companies falling within the classifications and descriptions of various acts prohibited or subjected to regulation or control by said Commission under the provisions of said Holding Company Act, which said acts are more specifically set forth in paragraphs 46 and 47 hereof; said plaintiff Commission and the Commissioners further intend and threaten, if defendants shall not file such notifica-
167 tions of registration, to enforce the provisions of said Holding Company Act, under the purported authority of 18 (f) thereof, by transmitting to the Attorney General e dence of failure to register and of acts declared unlawful by Section 4 (a) of said Act, which acts are more specifically set forth in paragraph 43 hereof; (b) subject to the allegations set forth in this paragraph 50 hereof, the Attorney General intends and threatens to institute, upon receiving such reports and information from the plaintiff Commission and the Commissioners, a large number of criminal proceedings to collect the fines and impose the punishments provided for by said Act, which proceedings and the cumulative, onerous, and excessive penalties authorized by the provisions of said Act will have the effect of coercing defendants to register under said Act and to accept the rules, regulations, and orders of the plaintiff Securities and Exchange Commission and thus permit said plaintiff to regulate every detail of defendants' businesses in accordance with the arbitrary and uncontrolled discretion of said plaintiff Commission; and (c) subject to the allegations set forth in this paragraph 50 hereof, the Postmaster General intends and threatens to enforce the provisions of Section 4 (a) of said Act by preventing the defendants from using the mails to conduct the acts necessarily incidental to their businesses specifically set forth in paragraph 43 hereof, which acts are done in the lawful and necessary conduct of

their business, thus altogether preventing them from carrying on their business, or any part thereof. Each and all of the foregoing threatened acts of said plaintiff Commission and of the Commissioners, the Attorney General, and the Postmaster General, will result in immediate and irreparable injury, loss, and damage to defendants as is hereinafter in the paragraph immediately following more specifically alleged.

51. The right of each defendant to manage its property and to conduct its business free from all interference and restraint by the plaintiff Securities and Exchange Commission and by the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, by the Attorney General and the Postmaster General acting under color of said Holding Company Act, is a property right of great value which will be destroyed by said plaintiff Commis-
168 sion and by the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, by said Attorney General and said Postmaster General to the irreparable injury of each such defendant, unless they are restrained from enforcing the provisions of said Act against any of the defendants. The property right of each such defendant to enjoy and conduct its business free from any unlawful interference will be invaded and destroyed whether or not any such defendant shall register under said Holding Company Act, in the following manner:

(a) Even though this Court does not direct the defendants to register under said Act, the provisions of Section 4(a), and the threatened enforcement thereof by plaintiff Securities and Exchange Commission and by the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, by the Attorney General and Postmaster General, will immediately impair, and threaten wholly to destroy, the value of the investment of the defendants in the securities of the companies described in paragraphs 32 to 36 hereof. As unregistered holding companies, the continued ownership by defendants on and after December 1, 1935, of said securities is made unlawful and it is also made unlawful for defendants to dispose of said securities by use of the mails or by any means or instrumentality of interstate commerce or to sell said securities in any manner having reason to believe that such securities will be resold by use of the mails or any means or instrumentality of interstate commerce, by reason whereof, and of the threatened acts of plaintiff Securities and Exchange Commission and of the Commissioners and, subject to the allegations set forth in paragraph 50 hereof, of the Attorney General and Postmaster General defendants will be wholly deprived of the benefits of ownership of said securities and their value to defendants will be wholly destroyed and defendants will be likewise deprived of any practicable market in which they may dispose of said securities and realize anything thereon and the property of defendants will thus be confiscated;

(b) Even though this Court does not direct the defendants to register under said Act, they will be harassed by plaintiff Securities and Exchange Commission and by the Commissioners, and, subject to the allegations set forth in paragraph 50 hereof, by the Attorney Gen-
169 eral and Postmaster General and subjected to a great number of civil and criminal suits and the danger of excessive and onerous penalties amounting to $200,000 for each and every offense by reason of the acts set forth in paragraph 43 hereof which it will be necessary for defendants to do in the ordinary and daily conduct of their business and which are by said Act declared to be unlawful. Against such numerous suits and prosecutions, and against the threat of the excessive penalties to be imposed thereby, defendants have no adequate remedy at law;

(c) If defendants are forced by the threats hereinabove set forth or directed by order of this Court to file a notification of registration and, subsequently, the other documents and information required under the provisions of Section 5 of said Act, they will be forced to expend in the aggregate a large sum of money, to wit, not less than $325,000 in order to prepare and compile all the information, schedules, appendices, and documents required to be contained in or filed with their complete registration statements and which sum so expended will be wasted and dissipated;

(d) If defendants are forced by the threats hereinabove set forth or directed by order of this Court to register under said Act, they will immediately be forced to institute or defend a large number of proceedings to review or to resist the enforcement of orders and regulations of said Commission, which said Commission is required to make in accordance with the provisions of said Act more particularly alleged in paragraph 46, all of which provisions, as hereinabove alleged, are in violation of the Constitution of the United States;

(e) If defendants are forced by the threats hereinabove set forth or directed by order of this Court to register under said Act, the values of the property and business of defendants and of the tangible and intangible property required and used therein, and of the private fund invested and risked therein will immediately be impaired, and may eventually be destroyed, by reason of the unlawful interference by plaintiff Securities and Exchange Commission and by the Commissioners with the control and direction of defendants' property and business;

(f) If defendant Bond and Share is forced by the threats
170 hereinabove set forth, or directed by order of this Court, to register under said Act, the provisions of Section 11 of said Act will require the reorganization of said defendant in such a manner that its ownership or control will be confined to a single integrated public utility system (with such additional integrated public utility systems as the plaintiff Commission may permit in

accordance with the provisions of Section 11), all at the will of the Commission, at any time subsequent to January 1, 1938, which provisions and the required acts of the plaintiff Securities and Exchange Commission thereunder immediately tend to destroy the value of defendant Bond and Share's said investment in the other defendants, make the financing of said companies and their subsidiary companies and the conduct of their public utility business impossible and result in the present destruction of the value of defendant Bond and Share's property and investment.

(g) If defendants American Company, Electric Company, and National Company are forced by the threats hereinabove set forth, or directed by order of this Court, to register under said Act, the provisions of Section 11 of said Act will require the reorganization of said defendants and their subsidiary companies mentioned in paragraphs 32, 33, 34, and 35 hereof in such a manner that the respective subsidiary companies of each of said defendants will constitute but a single integrated public utility system as defined in said Act, and will confine the ownership or control of each of said defendants to a single one of such systems (with such additional integrated public utility systems as the plaintiff Commission may permit in accordance with the provisions of Section 11), all at the will of the Commission, at any time subsequent to January 1, 1938, which provisions and the required acts of the plaintiff Securities and Exchange Commission thereunder destroy the value of said defendants' investment in said subsidiary companies, make the financing of said subsidiary companies and the conduct of their public utility business impossible and result in the present destruction of the value of said defendants' respective property and investments.

(h) If the remaining holding company defendants, American Gas, United Gas Corporation, Power Securities Corporation, Lehigh Power Securities Corporation, and Easton Consolidated Elec-
171 tric Company, and the operating company defendants are forced by the threats hereinabove set forth, or directed by order of this Court, to register under said Act and the holding company system of any of said defendants is found not to constitute a single integrated public utility system, the provisions of Section 11 of said Act will require the reorganization of such defendant in such manner as to confine the ownership or control of such defendant to a single integrated public utility system (with such additional integrated public utility systems as the plaintiff Commission may permit in accordance with the provisions of Section 11), all at the will of the Commission, at any time subsequent to January 1, 1938, which provisions and the required acts of the plaintiff Securities and Exchange Commission thereunder immediately threaten and tend to destroy such defendants' investment in its electric or gas utility properties and tend to injure and prevent the financing of such defendant and its subsidiary companies and the conduct of their

public utility business and result in the present depreciation and possible future destruction of the value of such defendant's property and investment; and

(i) Whether defendants shall or shall not register under said Act, the provisions of Sections 4, 11, and 13 of said Act, and the threatened enforcement thereof by the plaintiff Securities and Exchange Commission and by the Commissioners, and, subject to the allegations in paragraph 50 hereof, by the Attorney General and Postmaster General, and the onerous and excessive penalties provided for the violation thereof, will imemdiately impair and will progressively tend to destroy the management of defendants, and the technical and service organizations of defendant American Gas and of Ebasco Services Incorporated, which are composed of experienced and skilled persons especially trained in the duties which they perform, and upon the continued and efficient services of whom the successful operation of defendants and their subsidiary companies depends. There is every reasonable probability that such persons will not and cannot continue in their present duties, or in the efficient performance thereof, because of the mandatory dismemberment of defendants' systems in the near future, and the present threat of criminal penalties for the doing of acts which the continued performance of their duties requires.

172 The controversy arising upon the facts hereinbefore alleged immediately and irreparably affects the right of the defendants to conduct, manage, conserve, and control the disposition of their property, and the prompt determination and declaration of defendants' legal rights is immediately necessary. In order to effectually preserve and protect defendants' property rights, further relief as prayed is both necessary and proper.

By reason of all the foregoing, including the continued existence of said Act and the proceedings threatened to be taken by the plaintiff Securities and Exchange Commission and by the Commissioners and, subject to the allegations in paragraph 50, by the Attorney General and Postmaster General thereunder, the defendants are suffering and will continue to suffer a great and irreparable injury to their property, and such injury will constitute an immediate and irreparable loss for which they have, and can have, no adequate remedy at law.

Wherefore, the premises considered, the defendants pray:

(1) That on the amended and supplemental bill of complaint and the answer herein, the amended and supplemental bill of complaint be dismissed.

(2) That on the separate defense, counterclaim, and cross-bill herein:

(a) This Court enter a declaratory judgment under Section 274 (d) of the Judicial Code, as amended by the Act of June 14, 1934 (Chapter 512, 48 Stat., 955, U. S. C. A., Title 28, Section 400), that

said Holding Company Act, and each and every provision thereof, is unconstitutional, void, and of no effect.

(b) This Court grant defendants after notice and hearing a temporary injunction against plaintiff Securities and Exchange Commission, enjoining said Commission, its agents, and all persons acting in aid of said Commission, from making any rule, regulation, or order applicable to defendants under said Holding Company Act and, specifically, any rule, regulation, or order under the provisions referred to in paragraphs 46 and 47 hereof.

(c) This Court grant defendants, after notice and hearing, a
173 temporary injunction against plaintiff Commission and the Commissioners, enjoining said Commission and Commissioners, and their successors in office, their agents and all persons acting in aid of them from instituting or taking any steps toward the institution of any action, proceeding, or prosecution designed to compel defendants or the directors, officers, or employees thereof, to comply with said Act, or to compel the defendants to register under said Holding Company Act, or to enforce against defendants, or the directors, officers, or employees thereof, any penalty or other liability imposed by said Act, or authorized thereunder, on account of acts done or omitted by defendants or the directors, officers, or employees thereof; and enjoining the plaintiff Commission and the Commissioners, and their successors in office and all persons acting in aid of it or them, from transmitting to the Attorney General, or his successors in office, any evidence of violation of said Act by the defendants or the directors, officers, or employees thereof, or in any manner from inducing said Attorney General to institute proceedings against them, or any of them.

(d) This Court grant defendants, after notice and hearing, a temporary injunction against said Attorney General, and his successors in office, and all persons acting in aid of him or his successors in office or under his superintendence or direction or the superintendence or direction of his successors in office, enjoining him and them from instituting or directing the institution or any proceeding against the defendants, or any of them, or their directors, officers, or employees, on account of any act done or omitted to be done under said Act and that this Court grant defendants, after notice and hearing, a temporary injunction against the Postmaster General and his successors in office and those acting or claiming to act under his direction or authority or under the direction or authority of his successors in office, enjoining him and them from enforcing the postal provisions of said Act by excluding from the mails any property, communication, or securities of the defendants, or any of them, or otherwise, under or by virtue of the terms or provisions or under the authority of said Holding Company Act.

(e) On final hearing this Court enter a permanent injunction to the same effect.

174 (f) For such other and further relief as to the Court may seem meet.

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THOMAS D. THACHER,
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A. J. G. PRIEST,
2 Rector Street, New York, N. Y., of Counsel for Defendants Electric Bond and Share Company, American Power & Light Company, National Power & Light Company, and Electric Power & Light Corporation.
M. F. MILLIKAN,
30 Church Street, New York, N. Y., of Counsel for Defendants American Gas and Electric Company, Appalachian Electric Power Company, The Ohio Power Company, The Scranton Electric Company, and Atlantic City Electric Company.

Exhibit I to answer

Properties of, and Business Done by, Subsidiaries of American Power & Light Company

(a) Central Arizona Light and Power Company, organized under the laws of Arizona in 1920 and having its principal office and place of business in Phoenix, Arizona, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems, and a gas utility business by means of a manufactured gas plant and gas dis-
175 tribution systems for distributing manufactured and natural gas. All of the property of the Company used for the conduct of its electric utility business and gas utility business is located, and all of its operations are conducted, solely within the State of Arizona. The Company purchases (in Arizona) all of its natural gas requirements from Western Gas Company, a subsidiary of El Paso Natural Gas Company. Such gas is transmitted into Arizona from New Mexico by said Western Gas Company. The aggregate sales of electric energy by the Company for the year 1934 were approximately 69,000,000 kilowatt hours, and its electric operating revenues were approximately $2,200,000. The aggregate operating revenues of said Company for the year 1934, including revenues of said Company for the year 1934, including revenues from both its electric and gas utility businesses, were approximately $2,700,000.

(b) Florida Power & Light Company, organized under the laws of Florida in 1925 and having its principal office and place of business in Miami, Florida, has throughout its history conducted, and still conducts, an electric utility business by means of generating plants, transmission lines and distribution systems, and a manufactured gas utility business by means of manufactured gas plants and gas distribution systems. All of the property of the Company used for the conduct of its said electric utility business and gas utility business is located, and all of its operations are conducted, solely within the State of Florida. The aggregate sales of electric energy by the Company for the year 1934 were approximately 170,000,000 kilowatt hours, and its electric operating revenues for said year were approximately $9,000,000.

The Company also conducts an ice business solely within the State of Florida and owns all or substantially all of the stock of three subsidiary companies rendering water and transportation service solely within the State of Florida. The aggregate operating revenues of the Company, including the revenues from its electric and gas utility and ice businesses, were approximately $10,600,000 for the year 1934, and the aggregate operating revenues of said three subsidiaries for said year were approximately $1,100,000.

(c) Kansas Gas and Electric Company, organized under the laws of West Virginia in 1909 and having its principal office and place of business in Wichita, Kansas, has for many years conducted and
176 still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located solely within the State of Kansas, except that certain lines extend into the State of Missouri for the distribution of electric energy to a few customers in Missouri. The Company also has a transmission line extending to the Kansas-Oklahoma boundary which is used to provide temporary emergency interchange connections with a non-associate electric utility company having properties in Oklahoma and also has facilities for establishing temporary emergency interchange connections in Kansas with two other non-associate electric utility companies. The aggregate sales of electric energy by the Company in Kansas for the year 1934 were approximately 197,000,000 kilowatt hours and the operating revenues therefrom were approximately $5,000,000. The aggregate sales of electric energy by the Company in Missouri for the year 1934 were approximately 6,000,000 kilowatt hours and the operating revenues therefrom were approximately $80,000. All of the electric energy sold by the Company in Missouri is sold at distribution voltages. The sales of electric energy over the Company's transmisssion line extending to the Kansas-Oklahoma boundary in the year 1934 amounted to approximately 100,000 kilowatt hours and represented transformer losses only. In addition thereto, there was an unavoidable interchange at said point incident to voltage regulation.

(d) Minnesota Power & Light Company, organized as Duluth-Edison Electric Company under the laws of Minnesota in 1906 (name changed to Minnesota Power & Light Company in 1923) and having its principal office and place of business at Duluth, Minnesota, has for many years conducted, and still conducts, an electric utility business by means of generating plants, transmission lines and distribution systems, located solely within the State of Minnesota. Certain of the Company's transmission and distribution lines extend to the Minnesota-Wisconsin boundary where certain electric energy is sold at wholesale for resale to Northern Power Company and (through the latter Company) to Superior Water, Light and Power Company, associate electric utility companies. The aggregate sales of electric energy by the Company at the Minnesota-Wisconsin boundary for the year 1934 were approximately 35,000,000 kilowatt hours
177 and the revenues therefrom were approximately $420,000. The aggregate sales of electric energy by the Company in the State of Minnesota, including such sales at said boundary for the year 1934, were approximately 272,000,000 kilowatt hours and its electric operating revenues were approximately $5,300,000. The Company also renders steam heating service in certain communities in Minnesota. In 1935 the Company's sales of electric energy in Minnesota itself increased approximately 30 percent.

(e) The Montana Power Company, organized under the laws of New Jersey in 1912 and having its principal office and place of business in Butte, Montana, has for a number of years conducted, and still conducts, an electric utility business by means of generating stations, transmission lines and distribution systems and a natural gas utility business by means of gas distribution systems, all of the Company's gas requirements being purchased in Montana from an associate company. All of the properties used for the conduct of the Company's electric utility business and gas utility business are located solely within Montana. One of the Company's electric transmission lines extends to a point in Montana near the Idaho-Montana boundary, at which point electric energy is delivered to Idaho Transmission Company, a subsidiary electric utility company, for delivery by it to customers of The Montana Power Company in Idaho. The Company also delivers, at a point in Montana, to a non-associate railroad company, a small amount of electric energy for redelivery by said railroad company to Idaho Transmission Company at a point in Idaho. The aggregate sales of electric energy by said Company in Montana, exclusive of electric energy so delivered to Idaho Transmission Company, for the year 1934 were approximately 690,000,000 kilowatt hours and its electric operating revenues were approximately $7,540,000. The amount of electric energy delivered to Idaho Transmission Company for redelivery for the account of said The Montana Power Company in the State of Idaho for the calendar year 1934 was approximately 17,000,000 kilowatt

hours and the revenues therefrom were approximately $110,000.
The Company also renders water and irrigation service and
178 steam heating service in certain communities solely in Montana. The aggregate operating revenues of the Company, including the revenues from its electric utility business, gas utility business and water irrigation, and steam heating service, were approximately $9,010,000 for the year 1934. There have been no changes in the character of the Company's business in 1935, but kilowatt hour sales and revenues have been substantially higher, a prolonged strike in an important industry having reduced sales and revenues in 1934.

The Montana Power Company also owns all, or substantially all, of the stock of, and controls the operations of, Idaho Transmission Company, a corporation organized under the laws of Montana. Idaho Transmission Company conducts an electric utility business by means of transmission lines and a distribution system located solely within Idaho, except that one transmission line extends over the Montana-Idaho boundary line for a distance of approximately 10 feet, where it interconnects with a transmission line of The Montana Power Company. The principal business of Idaho Transmission Company is the delivery of electric energy received from The Montana Power Company in Montana to mining customers of The Montana Power Company in the State of Idaho and the interchange of electric energy with The Washington Water Power Company, an associate company, for account of The Montana Power Company. In the year 1934 Idaho Transmission Company so delivered to customers of The Montana Power Company approximately 17,000,000 kilowatt hours and interchanged with The Washington Water Power Company approximately 140,000 kilowatt hours in deliveries and 110,000 kilowatt hours in receipts, and for this service it received from The Montana Power Company approximately $37,000 in service charges and rentals. Idaho Transmission Company also owns and operates a small distribution system in Avery, Idaho, over which in the year 1934 it sold approximately 50,000 kilowatt hours, receiving revenues from such sales of approximately $3,000. The electric energy so sold was received from The Montana Power Company over a transmission line belonging to a nonassociate railroad company. Application has been made to the Federal Power Commission for
permission to transfer all the properties of Idaho Transmis-
179 sion Company to The Montana Power Company. In 1935 receipts of electric energy from The Washington Water Power Company were substantially increased.

The Montana Power Company also owns all or substantially all of the capital stock of Rocky Mountain Power Company, a Delaware corporation which owns a partially constructed hydro-electric development in Montana.

(f) Montana Power Gas Company, organized under the laws of New Jersey in 1932 and having its principal office and place of busi-

ness in Butte, Montana, has throughout its history conducted, and still conducts, a natural gas business by means of natural gas production and transmission facilities located solely within the State of Montana. The Company also purchases substantial amounts of natural gas from sources solely within the State of Montana. The aggregate sales of gas by said Company for the year 1934 were approximately 4,900,000 thousand cubic feet. The operating revenues of said Company from all sources for said year were approximately $960,000. There have been no changes in the character of the Company's business in 1935, but its sales and revenues have increased substantially. A large part of this Company's gas sales were to an associate company, The Montana Power Company, which conducts a retail gas utility business in Montana. As an incident of and in connection with its gas business, Montana Power Gas Company also extracts gasoline and butane from natural gas, owns and operates certain oil production facilities located solely within the State of Montana and sells oil, butane and natural gas gasoline.

(g) Nebraska Power Company, organized under the laws of Maine in 1917 and with its principal office and place of business at Omaha, Nebraska, has for many years conducted, and still conducts, an electric utility business by means of a generating plant and transmission lines and distribution systems located solely within the State of Nebraska. The Company sells certain electric energy (approximately 26,000,000 kilowatt hours in 1934) at its generating plant at wholesale for resale to its subsidiary, Citizens Power & Light Company, near the Iowa-Nebraska boundary and also sells (approximately 23,000,000 kilowatt hours in 1934) electric energy at wholesale for resale to a non-associate electric utility having properties in Nebraska and Iowa at another point in Nebraska near said Iowa-Nebraska
180 boundary. The sales of electric energy so made were approximately 49,000,000 kilowatt hours in the year 1934, with revenues therefrom of approximately $420,000. The aggregate sales of electric energy by the Company in Nebraska in 1934, including such sales at wholesale, were approximately 320,000,000 kilowatt hours and its electric operating revenues were approximately $6,500,000.

Nebraska Power Company owns all or substantially all the capital stock of, and controls the operations of, Citizens Power & Light Company, a New Jersey corporation which conducts an electric utility business by means of a distribution system in and near the City of Council Bluffs, Iowa, including a distribution line which crosses the Iowa-Nebraska boundary and extends into Nebraska a distance of approximately 700 feet to the generating station of Nebraska Power Company by means of which it purchases its requirements of electric energy from said Nebraska Power Company. Citizens Power & Light Company also transfers a small amount of electric energy from Nebraska (included in the total of 49,000,000 kilowatt hours sold by Nebraska Power Company as set forth above) for the account of a non-associate company, but makes all of its sales of electric

energy in the State of Iowa. The aggregate sales of electric energy by said Citizens Power & Light Company in 1934 were approximately 22,000,000 kilowatt hours and its electric operating revenues were approximately $820,000.

(h) New Mexico Electric Service Company, organized under the laws of New Mexico in 1930, and having its principal office and place of business in Hobbs, New Mexico, has throughout its history conducted, and still conducts, an electric utility business by means of generating plants and distribution systems located, and operations carried on, solely within the State of New Mexico. The aggregate sales of electric energy by said Company for the calendar year 1934 were approximately 2,200,000 kilowatt hours, and its electric operating revenues for said year were approximately $87,000. There have been no changes in the character of the Company's business in 1935, but its kilowatt hour sales and revenues have increased substantially.

(i) Northern Power Company, organized under the laws of Wisconsin in 1906 and having its principal office and place of busi-
181 ness at Superior, Wisconsin, has for many years conducted, and still conducts, an electric utility business by means of distribution lines located solely within the State of Wisconsin. Certain of such lines extend to the Wisconsin-Minnesota boundary and are used solely for receiving electric energy at said boundary from Minnesota Power & Light Company for redelivery to Superior Water, Light and Power Company and for distribution and sale to consumers, all within the State of Wisconsin. The aggregate amount of electric energy transported from said boundary by said Company over said lines in the year 1934 amounted to approximately 35,000,000 kilowatt hours. Of this amount, approximately 13,000,000 kilowatt hours were so redelivered to Superior Water, Light and Power Company and the remainder were used by the Company itself for distribution to its own customers. The Company received $6,000 for such redelivery service in 1934 and its total operating revenues in that year, excluding the payment for such redelivery service, were approximately $306,000.

(j) Northwestern Electric Company, organized under the laws of Washington in 1911 and with its principal office and place of business at Portland, Oregon, has since its organization conducted and still conducts an electric utility business by means of steam and hydroelectric generating plants, transmission lines and distribution systems located within the States of Oregon and Washington. The Company owns certain transmission lines which cross the Oregon-Washington boundary and are used for transmitting substantial amounts of electric energy across such state boundary for ultimate sale to retail customers of the Company or at wholesale. The Company in 1934 purchased the major part of its energy requirements in Washington from associate companies, such purchases including large amounts of surplus energy temporarily available at low cost which made it advantageous for the Company to limit the operation

of its Oregon steam-electric generating plants to the furnishing of stand-by service.

The division of the Company's electric business between the states of Oregon and Washington in 1934 is indicated by the following relations: Electric generating capacity installed and available under contract: Oregon, 62%; Washington, 38%; Electric energy generated and purchased: Oregon, 1%; Washington, 99%; Elec-
182 tric energy sales: Oregon, 49%; Washington, 51%; Average maximum firm power demand: Oregon, 65%; Washington, 35%; Electric revenue: Oregon, 73%; Washington, 27%; Customers: Oregon, 79%; Washington, 21%. The aggregate sales of electric energy by the Company in Oregon and Washington in 1934 were approximately 135,000,000 kilowatt hours in the case of Oregon, with electric operating revenues therefrom of approximately $2,360,000 and approximately 140,000,000 kilowatt hours in the case of Washington with electric operating revenues therefrom of approximately $870,000. The Company transferred across the Oregon-Washington boundary for its own account in 1934 approximately 156,000,000 kilowatt hours of electric energy. Its aggregate sales of electric energy at wholesale for resale in that year, involving in part the incidental movement of electric energy across state boundaries, were approximately 25,000,000 kilowatt-hours (consisting principally of temporarily available surplus energy) and the aggregate revenues therefrom were approximately $62,000, or less than 2% of the Company's aggregate electric operating revenues in that year. Approximately 89% of the energy sold in Washington represents sales to two high-load-factor industrial power users and sales of temporarily available surplus energy.

Northwestern Electric Company also has carried on for a number of years and still carries on the business of supplying steam heat in the City of Portland, Oregon. The aggregate operating revenues of the Company in 1934, including the operating revenues from said steam heating service, were approximately $3,530,000.

(k) Pacific Power & Light Company, organized under the laws of Maine in 1910 and having its principal office and place of business at Portland, Oregon, has for a number of years conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located within the States of Oregon and Washington. The Company owns certain transmission lines which cross the Oregon-Washington boundary and are used for transmitting certain amounts of electric energy across such state boundary for ultimate sale to retail customers of the Company or at wholesale.

The division of the Company's electric business between the
183 states of Oregon and Washington in 1934 is indicated by the following relations: Electric generating capacity installed and available under contract; Oregon, 46%; Washington, 54%; Electric energy generated and purchased: Oregon, 38%; Washington, 62%;

Electric energy sales: Oregon, 28%; Washington, 72%; Electric revenue: Oregon, 40%; Washington, 60%; Customers: Oregon, 38%; Washington, 62%. The aggregate sales of electric energy by the Company in Oregon and Washington in 1934 were approximately 52,000,000 kilowatt-hours in the case of Oregon, with electric operating revenues of approximately $1,600,000 and approximately 134,000,000 kilowatt-hours in the case of Washington with electric operating revenues of approximately $2,400,000. The Company transferred across the Oregon-Washington boundary for its own account in 1934 approximately 47,000,000 kilowatt-hours of electric energy. Its aggregate sales of electric energy at wholesale for resale in that year, involving in part the incidental movement of electric energy across state boundaries, were approximately 45,000,000 kilowatt-hours (consisting principally of temporarily available surplus energy) and the aggregate revenues therefrom were approximately $108,500, or less than 3% of the Company's aggregate electric operating revenues in that year. The Company, which also renders certain steamheating and water service, in 1934 purchased a large part of its energy requirements from associate electric utility companies.

Pacific Power & Light Company owns all or substantially all of the capital stock of, and controls the operations of, Inland Power & Light Company, an Oregon corporation which owns a large hydroelectric generating station in Washington and two small hydroelectric generating stations in Oregon, as well as a transmission line in Washington. Inland Power & Light Company sells electric energy (at its generating stations) to Pacific Power & Light Company and to the associate Northwestern Electric Company, its sales to and revenues from said Companies, respectively, in the year 1934 having been approximately 3,000,000 kilowatt hours with approximately $20,000 of revenue therefrom and 177,000,000 kilowatt hours (including substantial quantities of surplus energy) with approximately $540,000 of revenue therefrom.

(l) Portland Gas & Coke Company, organized under the
184 laws of Oregon in 1910 and having its principal office and place of business in Portland, Oregon, has for many years conducted and still conducts a gas utility business by means of manufactured gas plants, transmission mains, and distribution systems located entirely in the State of Oregon, except that its distribution system extends across the Oregon-Washington boundary line for the purpose of serving customers of the Company in one community in the State of Washington. The Company serves approximately 2,000 customers in the State of Washington, and the aggregate sales of gas by the Company for the year 1934 in Washington were approximately 58,000 thousand cubic feet and the gas operating revenues therefrom were approximately $63,000. The Company serves approximately 80,000 customers in the State of Oregon and the aggregate sales of gas for the year 1934 in that State were approximately 2,500,000 thousand cubic feet and the

gas operating revenues therefrom were approximately $2,600,000. The Company also carries on the manufacture and sale of carbon briquets and other by-products derived from the manufacture of gas. Its aggregate operating revenues from the sales of gas and of by-products amounted to approximately $3,000,000 for the year 1934.

(m) Superior Water, Light and Power Company, organized under the laws of Wisconsin in 1889 and having its principal office and place of business in Superior, Wisconsin, has for many years conducted, and still conducts, an electric utility business by means of a stand-by generating station and a distribution system and a gas utility business by means of a gas distribution system, all of such property being located solely within the State of Wisconsin. Except during periods of emergency, the Company obtains its requirements of electric energy from Minnesota Power & Light Company, an associate company, which energy is delivered to the Company, within the State of Wisconsin, by Northern Power Company, also an associate company. All of the electric energy so purchased by the Company is distributed by the Company in the State of Wisconsin. The aggregate sales of electric energy by said Company for the year 1934 were approximately 11,000,000 kilowatt hours and its electric operating revenues were approximately $501,000. The Company also renders water service in the State of Wisconsin,
185 and in connection therewith pumps water from wells located in the State of Minnesota, but renders no water service outside of the State of Wisconsin. The Company purchases its manufactured gas requirements from a non-associate company at the Minnesota-Wisconsin boundary. The aggregate operating revenues of said Company, including the revenues from its electric business, gas business, and water business, were approximately $905,000 for the year 1934.

(n) Texas Electric Service Company, organized under the laws of Texas in 1929 and having its principal office and place of business in Fort Worth, Texas, has conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located, and operations carried on, solely within the State of Texas. The aggregate sales of electric energy by the Company in the year 1934 were approximately 283,000,000 kilowatt hours, with electric operating revenues of approximately $6,470,000. For a number of years the Company also distributed electric energy at retail in Piedras Negras, Mexico, but has sold all its properties in Mexico.

(o) Texas Power & Light Company, organized under the laws of Texas in 1912 and having its principal office and place of business in Dallas, Texas, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located, and operations carried on, solely within the State of Texas. The aggregate sales of

electric energy by the Company for the year 1934 were approximately 350,000,000 killowatt hours, and its electric operating revenues were approximately $9,100,000.

(p) Texas Public Utilities Corporation, organized under the laws of Texas in 1926 and having its principal office and place of business in Dallas, Texas, has throughout its history conducted, and still conducts, an electric utility business by means of a stand-by generating station and a distribution system located, and operations carried on, solely within the State of Texas. Except during periods of emergency the Company purchases in Texas its entire requirements of electric energy for electric utility purposes from an associate electric utility company, the above-named Texas Power & Light Company. The aggregate sales of electric energy by the Com-
186 pany in 1934 were approximately 1,400,000 kilowatt hours and its electric operating revenues for said year were approximately $75,000. The Company also renders water service and ice service solely within the State of Texas. The Company buys natural gas at wholesale, from a non-associate company operating solely within the State of Texas, and resells such natural gas at wholesale, solely within the State of Texas, but it neither owns nor operates any facilities for distribution of natural gas. The aggregate operating revenues of the Company for the year 1934, including the revenues from its gas, water, ice, and electric businesses, were approximately $[illegible]100,000.

(q) The Washington Water Power Company, organized under the laws of Washington in 1889 and with its principal office and place of business at Spokane, Washington, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located within the states of Washington and Idaho. The Company owns certain transmission lines which cross the Washington-Idaho boundary and are used for transmitting certain amounts of electric energy across such state boundary for ultimate sale to retail customers of the Company or at wholesale. The Company's transmission system is interconnected with the transmission systems of the associate Pacific Power & Light Company in Washington and the associate Idaho Transmission Company in Idaho for sale of electric energy to and interchange of electric energy with said associate companies.

The division of the Company's electric business between the states of Washington and Idaho in 1934 is indicated by the following relations: Electric generating capacity installed and available under contract, Washington 89%, Idaho 11%; Electric energy generated and purchased, Washington, 97%, Idaho 3%; Electric energy sales, Washington 74%, Idaho 26%; Electric revenues, Washington 78%, Idaho 22%; Customers, Washington 82%, Idaho 18%. The aggregate sales of electric energy by the Company in Washington and Idaho in 1934 were approximately 460,000,000 kilowatt hours in the case of Washington, with electric operating revenues of approxi-

mately $5,200,000, and approximately 160,000,000 kilowatt hours in the case of Idaho, with electric operating revenues of ap-
187 proximately $1,500,000. The Company transferred across the Washington-Idaho boundary for its own account in 1934 approximately 233,000,000 kilowatt hours of electric energy. Its aggregate sales of electric energy in that year at or across state boundaries at wholesale for resale were approximately 10,400,000 kilowatt hours (including substantial quantities of surplus power) and the aggregate revenues therefrom were approximately $52,000, or less than 1% of the Company's aggregate electric operating revenues in that year. The Company also renders certain local water service in Idaho and Washington. In 1935 the Company also sold through Idaho Transmission Company to The Montana Power Company for resale approximately 12,300,000 kilowatt hours, its revenues therefrom having been approximately $37,000.

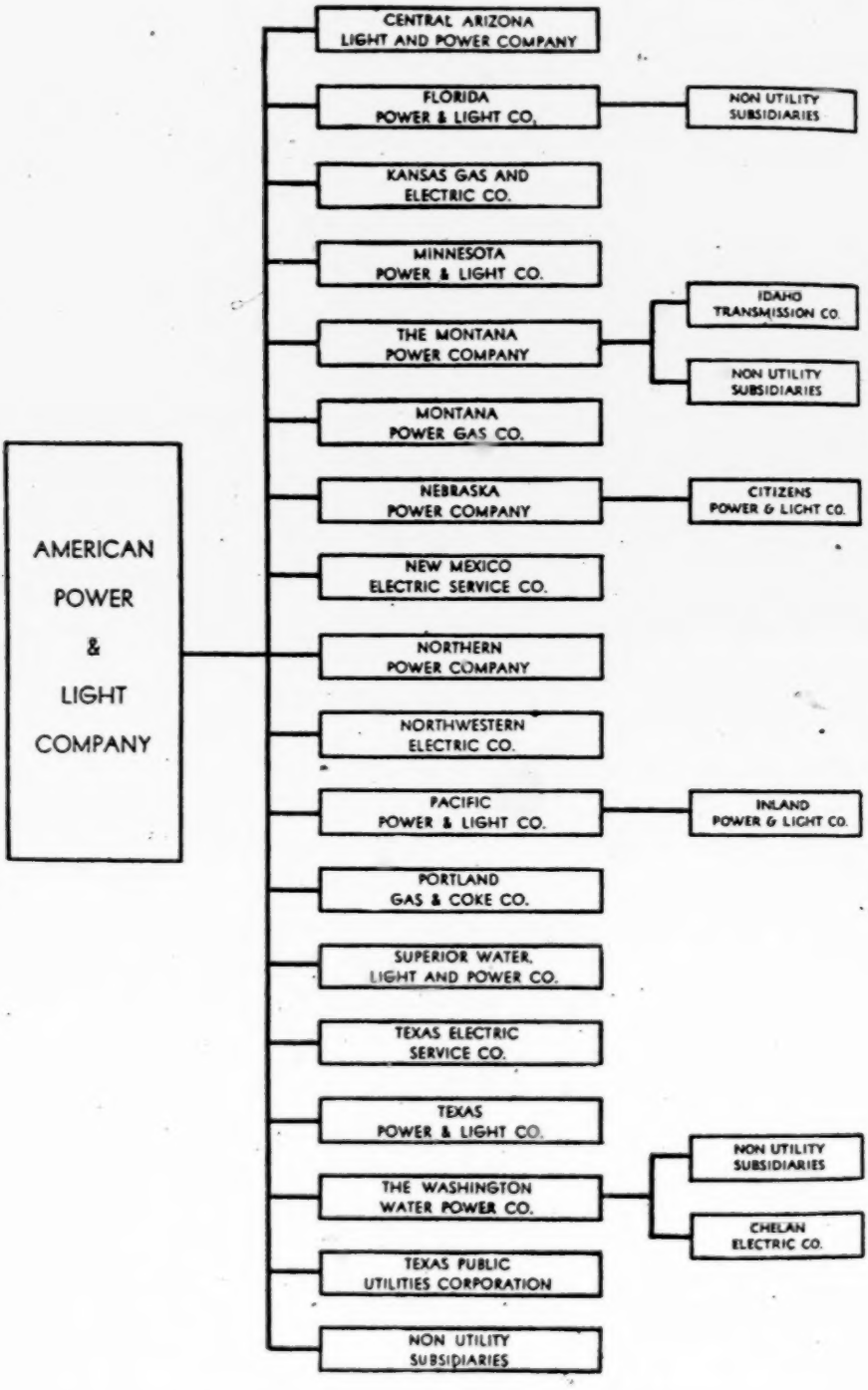
The Washington Water Power Company owns all or substantially all of the common stock of and controls the operations of Chelan Electric Company, a Washington corporation, which owns a large hydro-electric generating station in the State of Washington and smaller hydro-electric generating stations in the State of Idaho. All electric energy generated by Chelan Electric Company is delivered (at its generating stations) to The Washington Water Power Company.

The Washington Water Power Company also owns all or substantially all of the outstanding capital stock of and controls the operations of Spokane Central Heating Company and Spokane United Railways, which, respectively, render steam heating service and transportation service in the City of Spokane, Washington. The operating revenues of said three subsidiary companies in the year 1934 were approximately $1,300,000, of which $300,000 represented intercompany transactions.

The statements of earnings, sales, and operations made for the year 1934 for the companies referred to in this exhibit are for the last calendar year for which such statements are available and are typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

The above named direct and indirect subsidiaries of American Power & Light Company do not include certain minor companies holding land or conducting other businesses or "name-saving"
188 companies or subsidiary companies now in the process of dissolution or other "shell" subsidiary companies the corporate existence of which has been continued because of franchise problems, mortgage provisions, etc.

The corporate chart set forth on the next following page shows the relationships of the subsidiaries of American Power & Light Company herein described to that Company and to one another.


AMERICAN POWER & LIGHT COMPANY
CENTRAL ARIZONA LIGHT AND POWER COMPANY
FLORIDA POWER & LIGHT CO.
NON UTILITY SUBSIDIARIES
KANSAS GAS AND ELECTRIC CO.
MINNESOTA POWER & LIGHT CO.
THE MONTANA POWER COMPANY
IDAHO TRANSMISSION CO.
NON UTILITY SUBSIDIARIES
MONTANA POWER GAS CO.
NEBRASKA POWER COMPANY
CITIZENS POWER & LIGHT CO.
NEW MEXICO ELECTRIC SERVICE CO.
NORTHERN POWER COMPANY
NORTHWESTERN ELECTRIC CO.
PACIFIC POWER & LIGHT CO.
INLAND POWER & LIGHT CO.
PORTLAND GAS & COKE CO.
SUPERIOR WATER, LIGHT AND POWER CO.
TEXAS ELECTRIC SERVICE CO.
TEXAS POWER & LIGHT CO.
THE WASHINGTON WATER POWER CO.
NON UTILITY SUBSIDIARIES
CHELAN ELECTRIC CO.
TEXAS PUBLIC UTILITIES CORPORATION
NON UTILITY SUBSIDIARIES

189 *Exhibit II to answer*

Properties of, and Business Done by, Subsidaries of Electric Power & Light Corporation

(a) Arkansas Power & Light Company, organized under the laws of Arkansas in 1926 with its principal office and place of business at Pine Bluff, Arkansas, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located solely within the State of Arkansas and a gas utility business by means of natural gas distribution systems also located solely within the State of Arkansas. Certain of the Company's transmission lines extend to the Arkansas-Louisiana boundary, to the Arkansas-Mississippi boundary and to the Arkansas-Tennessee boundary, and are used for the purpose of selling electric energy to, and receiving electric energy from other electric utility companies having properties outside the State of Arkansas.

The Company in the year 1934 generated with its own facilities and purchased from sources within the State of Arkansas, approximately 100,000,000 kilowatt hours of electric energy, and purchased at state boundaries approximately 222,000,000 kilowatt hours generated outside the State of Arkansas. All of the electric energy so generated and purchased was sold in the State of Arkansas, except approximately 7,700,000 kilowatt hours sold to associate companies at wholesale for resale over the Company's said transmission lines extending to the Arkansas-Louisiana, Arkansas-Mississippi, and Arkansas-Tennessee boundaries. The Company's aggregate electric operating revenues in 1934 were approximately $5,900,000, including approximately $100,000 derived from stand-by service and sales of electric energy at state boundaries, and the amount which it paid for energy purchased at state boundaries was approximately $790,000. The Company also transferred over its own lines through Arkansas to a point or points at a state boundary energy received at a state boundary for redelivery to, or for the account of, other electric utility companies from which such energy was received. The amount of electric energy so transferred in the year 1934 was aprpoximately 80,000,000 kilowatt hours.

190 The Company also has carried on for a number of years and still carries on the businesses of distributing water, operating ice plants and rendering steam heating and transportation service, all in various communities within the State of Arkansas. The aggregate operating revenues of the Company, including the revenues from the electric, gas, water, steam-heating, transportation and ice businesses done by the Company, were approximately $7,400,000 for the year 1934.

Arkansas Power & Light Company owns all or substantially all of the capital stock of The Garland Power and Development Company of Arkansas, an inactive company, which owns certain non-utility

land in the State of Arkansas and which also owns 100% of the capital stock of White River Power Company, which, in turn, has certain rights and has made sundry investigations, etc., in connection with a proposed hydro-electric development on the White River in the State of Arkansas. The Garland Power and Development Company also owns all or substantially all the capital stock of Capital Transportation Company, which owns, or operates under lease, transportation facilities in the State of Arkansas.

(b) Dallas Power & Light Company, organized under the laws of Texas in 1917 and with its principal office and place of business at Dallas, Texas, has for many years conducted, and still conducts, an electric utility business by means of a generating plant, transmission lines, and a distribution system located, and operations conducted, solely within the State of Texas. The aggregate sales of electric energy by the Company in the year 1934 were approximately 200,000,000 kilowatt hours and its electric operating revenues were approximately $5,200,000.

(c) Louisiana Power & Light Company, organized under the laws of Florida in 1927 and with its principal office and place of business at Algiers, Louisiana, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located solely within the State of Louisiana and a gas utility business by means of natural gas distribution systems also located solely within the State of Louisiana.

The Company has transmission lines extending to the Louisi-
191 ana-Arkansas boundary and to the Louisiana-Mississippi boundary which are used principally for the purpose of selling electric energy to associate electric utility companies having properties, respectively, in said States of Arkansas and Mississippi. The Company purchases (in Louisiana) the major portion of its natural gas requirements, for resale within the State of Louisiana, from, or from a subsidiary of, United Gas Public Service Company, an associate natural gas company.

The aggregate sales of electric energy at wholesale for resale over the Company's said transmission lines extending to said Louisiana-Arkansas and Louisiana-Mississippi boundaries were approximately 360,000,000 kilowatt hours in the year 1934 and the revenues therefrom were approximately $1,500,000. In the year 1934, Company also purchased approximately 5,000,000 kilowatt hours over said lines. The aggregate sales of electric energy by the Company in the State of Louisiana and over said transmission lines extending to said state boundaries were approximately 550,000,000 kilowatt hours in 1934 and the electric operating revenues therefrom were approximately $4,500,000. The Company also transferred over its own lines through Louisiana to a point or points at a state boundary electric energy received at a state boundary for redelivery to an associate company from which such energy was received. The amount of electric energy so transferred in the year 1934 was approximately 1,347,000 kilowatt hours.

The Company also has carried on for a number of years and still carries on the businesses of distributing water, operating ice plants, and rendering transportation service, all in various communities within the State of Louisiana. The aggregate operating revenues of the Company, including the revenues from the electric, gas, water, transportation, and ice businesses done by the Company, were approximately $5,500,000 for the year 1934.

(d) Mississippi Power & Light Company, organized under the laws of Florida in 1927 and with its principal office and place of business at Jackson, Mississippi, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Mississippi, and a gas utility business by means of natural gas distribution systems also located solely within the
192. State of Mississippi. Certain of the Company's transmission lines extend to the Mississippi-Louisiana boundary, to the Mississippi-Arkansas boundary, and to the Mississippi-Tennessee boundary, and are used principally for the purpose of purchasing electric energy generated by other electric utility companies having properties outside the State of Mississippi. The Company purchases (in Mississippi) its natural gas requirements, for resale within the State of Mississippi, from United Gas Public Service Company, an associate natural gas company, from Southern Natural Gas Corporation, Memphis Natural Gas Company, and Interstate Natural Gas Company, and from two small local companies.

The Company, in the year 1934, generated with its own facilities and purchased from sources within the State of Mississippi approximately 8,000,000 kilowatt hours and purchased from associate electric utility companies approximately 140,000,000 kilowatt hours generated outside the State of Mississippi, all for sale to consumers in the State of Mississippi except as hereinafter referred to. The operating revenues from such electric energy sales were approximately $3,700,000, and the amount paid for energy purchased from sources outside the State of Mississippi in 1934 was approximately $720,000. The Company also transferred over its own lines through Mississippi to a point or points at a state boundary energy received at another point or points on a state boundary for redelivery to, or for the account of, other electric utility companies from which such energy was received. The amount of electric energy so transferred in the calendar year 1934 was approximately 70,000,000 kilowatt hours. In 1934 the Company sold at the Louisiana-Mississippi boundary to one municipality at wholesale for resale 150,000 kilowatt hours, the revenue from which was $5,600. Such municipality is no longer a customer of the Company.

The said Company also has carried on for a number of years and still carries on the business of distributing water, operating ice plants, and rendering transportation service, all in various communities within the State of Mississippi. The aggregate operating revenues of the Company, including the revenues from the electric, gas, water,

transportation, and ice businesses done by the Company, were approximately $4,800,000 for the year 1934.

193 (e) New Orleans Public Service, Inc., organized under the laws of Louisiana in 1926 and with its principal office and place of business at New Orleans, Louisiana, has since its organization conducted and still conducts an electric utility business by means of a generating plant and distribution system located solely within the State of Louisiana and a gas utility business by means of a manufactured gas plant and a distribution system supplying manufactured and/or natural gas, such plant and system also being located, and all of the gas, electric, and other operations of the Company being carried on, solely within the State of Louisiana. The Company purchases (in Louisiana) its natural gas requirements from a subsidiary of United Gas Public Service Company, an associate natural gas company.

The aggregate sales of electric energy by said Company in the year 1934 were approximately 277,000,000 kilowatt hours, and its electric operating revenues were approximately $7,500,000.

The Company also has carried on for a number of years and still carries on the business of supplying transportation service in the City of New Orleans, Louisiana, all of its facilities for rendering such service being located solely within the State of Louisiana. The aggregate operating revenues of said Company, including the revenues from the electric, gas, and transportation businesses done by said Company, were approximately $15,100,000 for the year 1934.

(f) Utah Power & Light Company, organized under the laws of Maine in 1912 and having its principal office and place of business at Salt Lake City, Utah, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located within the States of Utah and Idaho and two small generating plants, a transmission line, and two small distribution systems in the State of Wyoming. The Company owns certain transmission lines which cross the Utah-Idaho boundary and a transmission line which crosses the Utah-Wyoming boundary. Substantial amounts of electric energy are transmitted by the Company across such state

194 boundaries and are ultimately sold to customers of the Company in the states to which such energy has been transmitted.

The division of the Company's electric business among the three states of Utah, Idaho, and Wyoming in 1934 is indicated by the following relations: Electric generating capacity installed and available under contract: Utah, 49%; Idaho, 50%; Wyoming, 1%; Electric energy generated and purchased: Utah, 32%; Idaho, 67%; Wyoming, 1%; Electric energy sales: Utah, 92%; Idaho, 7%; Wyoming, 1%; Electric revenue: Utah, 89%; Idaho, 9%; Wyoming, 2%; Customers: Utah, 87%; Idaho, 11%; Wyoming, 2%. The aggregate sales of electric energy by the Company in the calendar year 1934 were approximately 390,000,000 kilowatt hours in the State of Utah, with electric operating revenues of approximately $7,660,000; approxi-

mately 27,000,000 kilowatt hours in the State of Idaho, with electric operating revenues of approximately $750,000; and approximately 2,600,900 kilowatt hours in the State of Wyoming, with electric operating revenues of approximately $140,000. The Company in 1934 transferred approximately 296,000,000 kilowatt hours across the Utah-Idaho boundary and approximately 1,800,000 kilowatt hours across the Utah-Wyoming boundary. Its aggregate sales of electric energy at wholesale for resale at or across state boundaries in that year were approximately 231,000 kilowatt hours, and its aggregate revenues therefrom were approximately $3,500, or less than one-tenth of 1% of the Company's aggregate electric operating revenues in that year. The Company also conducts a steam heating business in Salt Lake City, Utah. The Company's aggregate operating revenues in the year 1934, including its revenues from its electric and steam heating business were approximately $8,650,000.

Utah Power & Light Company owns all or substantially all of the capital stock of, and controls the operations of, (i) Utah Light and Traction Company, a Utah corporation which owns and operates a transportation system in Salt Lake City and vicinity and which also owns, but has leased to Utah Power & Light Company for ninety-nine years from January 1, 1915, certain electric generating plants, sub-transmission lines, and distribution systems located wholly within the state of Utah, (ii) The Western Colorado
195 Power Company, a Colorado corporation which conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located wholly within the State of Colorado, and (iii) Bountiful Light and Power Company, a Utah corporation which conducts an electric utility business by means of a distribution system in, and in the vicinity of, the City of Bountiful, Utah. The operating revenues of Utah Light and Traction Company from its transportation business in the year 1934 were approximately $1,000,000, while the aggregate sales of electric energy by said The Western Colorado Power Company in the year 1934 were approximately 17,000,000 kilowatt hours, and its electric operating revenues were approximately $490,000. The aggregate sales of electric energy by said Bountiful Light and Power Company in the year 1934 were approximately 600,000 kilowatt hours, and the electric operating revenues were approximately $38,000.

Electric Power & Light Corporation also owns all of the outstanding voting securities of Power Securities Corporation, which, in turn, owns all or substantially all of the common stock of Idaho Power Company, hereinafter described.

(g) Power Securities Corporation is a corporation organized and existing under the laws of New Hampshire which owns all of the common stock, except directors' qualifying shares, and 3,030 shares of the 7% Preferred Stock, of Idaho Power Company which is conducting, and for several years last past has conducted, an electric utility business in the States of Idaho and Oregon as hereinafter described:

(g) (1) Idaho Power Company, organized under the laws of Maine in 1915 and with its principal office and place of business at Boise, Idaho, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines and distribution systems located within the States of Idaho and Oregon. The Company has certain transmission lines which cross the Idaho-Oregon boundary; the sales of electric energy made from such lines at wholesale for resale either at the state line or in Oregon aggregated approximately 2,800,000 kilowatt hours in the year 1934, with revenues therefrom of approximately $26,000 (less than 1% of its aggregate electric operating revenues in that
196 year). The aggregate sales of electric energy by the Company in Idaho and Oregon in 1934, including such sales at wholesale over said transmission lines, were approximately 20,000,000 kilowatt hours in the case of Oregon (all transmitted into Oregon from Idaho), with electric operating revenues of approximately $340,000 and approximately 340,000,000 kilowatt hours in the case of Idaho, with electric operating revenues of approximately $3,700,000. The Company delivers substantial quantities of electric energy (approximately 223,000,000 kilowatt hours in 1934, which are included in the above figure of 340,000,000 kilowatt hours) to Utah Power & Light Company in Idaho primarily for transmission to, and resale in, Utah.

Idaho Power Company owns all or substantially all of the capital stock of, and controls the operations of, Nevada Power Company, an Idaho corporation which conducts an electric utility business by means of a transmission line which crosses the Idaho-Nevada boundary. Nevada Power Company makes all of its sales of electric energy in the State of Nevada. The aggregate sales of electric energy by Nevada Power Company in 1934 were approximately 1,000,000 kilowatt hours (all purchased from Idaho Power Company in Idaho) and its electric operating revenues were approximately $17,000. Application has been made to the Federal Power Commission for permission to transfer all the properties of Nevada Power Company to Idaho Power Company.

Electric Power & Light Corporation also owns all or substantially all of the common stock of Dallas Railway & Terminal Company, a corporation organized under the laws of Texas, which has for many years conducted and still conducts a transportation service in the City of Dallas, Texas. The operating revenues of said Company in 1934 were approximately $2,300,000.

Electric Power & Light Corporation also owns 61.58% of the outstanding voting securities of defendant United Gas Corporation. A description of the subsidiary companies of said United Gas Corporation is given in Exhibit III.

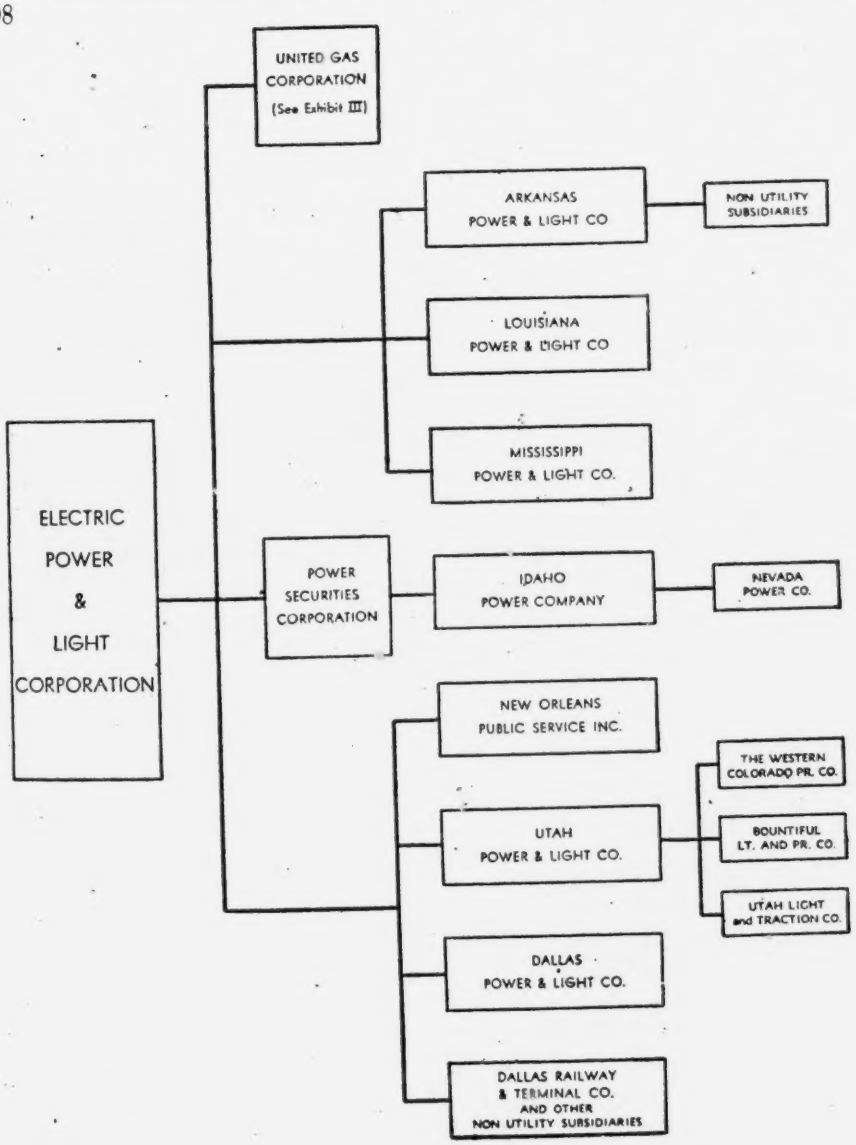
The statements of earnings, sales and operations made for the year 1934 for the companies referred to in this Exhibit are for the last calendar year for which such statements are available, and
197 are typical in their relationships to usual operations. Except

as herein noted, similar statements for 1935 would not show substantial variation.

The above named direct and indirect subsidiaries of Electric Power & Light Corporation do not include certain minor subsidiaries holding land or conducting other businesses or "name-saving" companies or subsidiary companies now in the process of dissolution or other "shell" subsidiary companies, the corporate existence of which has been continued because of franchise problems, mortgage provisions, etc.

The corporate chart set forth on the next following page shows the relationships of the subsidiaries of Electric Power & Light Corporation herein described to that Company and to one another.

198



199 *Exhibit III to answer*

Properties of and Business Done by Subsidiaries of United Gas Corporation

United Gas Public Service Company, organized under the laws of Delaware in 1930 and with its principal office and place of business at Houston, Texas, has since January 1, 1931, carried on and still carries on the business of producing, purchasing, transporting, distributing, and selling natural gas by means of wells and other production facilities, pipe lines and other transportation facilities and distribution systems in a territory which includes portions of the States of Texas, Lousiana, and Mississippi, the Company's pipe lines also extending into Alabama and Florida. In connection with the production of natural gas, and incident thereto, the Company owns and operates gasoline extraction plants for the purpose of removing gasoline from natural gas, all of which are in Texas and Louisiana. Likewise, in connection with the production of natural gas, and incident thereto, said Company owns and operates oil-producing properties in Louisiana and certain of its subsidiaries own and operate oil-producing properties in Texas.

United Gas Public Service Company also owns all or substantially all of the voting securities of, and controls the operations of, Southern Gas Utilities, Inc., a Delaware corporation which owns natural gas production, transportation, and distribution properties in the State of Texas; Northern Texas Utilities Company, a Delaware corporation which owns certain natural gas production, transportation, and distribution properties, all within the State of Texas with the exception of one pipe line which crosses a corner of the State of Oklahoma; and Houston Gulf Gas Company, a Delaware corporation which owns certain natural gas production, transportation, and distribution properties all within the State of Texas and which owns substantially all the outstanding voting securities of Houston Gas and Fuel Company, a Texas corporation which owns natural gas distribution properties in Houston, Texas.

The pipe lines of the Company and certain of its subsidiaries cross various boundaries of the states above indicated as well as the international boundary between the United States and the Republic
200 of Mexico and substantial amounts of natural gas are transported across such boundaries, being commingled with gas produced in each of the states entered (and in the Republic of Mexico), except Oklahoma, Florida, and Alabama. The division of the aggregate natural gas business of the Company and its subsidiaries in the year 1934 may be indicated approximately as follows: Production and/or purchase: Texas, 75,400,000 thousand cubic feet; Louisiana, 118,600,000 thousand cubic feet; Mississippi, 7,500,000 thousand cubic feet; Mexico, 200,000 thousand cubic feet; Total, 201,700,000 thousand cubic feet; Sales at retail and wholesale: Texas, 76,400,000 thousand cubic feet; Louisiana, 100,200,000 thousand cubic feet; Mexico, 5,400,000 thousand cubic feet; Mississippi, 3,900,000 thousand cubic feet; Alabama, 550,000 thousand cubic feet; and Florida, 620,000

thousand cubic feet; Total, 187,070,000 thousand cubic feet; Operating revenues from gas sales: Texas, $14,400,000; Louisiana, $7,200,000; Mexico, $600,000; Mississippi, $510,000; Alabama, $180,000; and Florida, $110,000; Total, $23,000,000. In 1934 the Company transported across state boundaries for sale in a state other than that in which the gas was produced approximately 26,000,000 thousand cubic feet of natural gas. In that year it sold across state or international boundaries at wholesale for resale and at the pressure at which such gas was transported across such boundaries approximately 5,200,000 thousand cubic feet of natural gas. Its revenues from such wholesale sales were approximately $310,000, or less than 1½% of its total revenues from the sale of natural gas in 1934. The Company also purchased in 1934 at pipe-line pressures approximately 13,500,000 thousand cubic feet of natural gas transported from Louisiana into Texas by a non-associate company. The revenues of United Gas Public Service Company and its said subsidiaries from sales of oil and natural gas gasoline in 1934 were approximately $1,490,000 and their total operating revenues from all sources in 1934 were approximately $24,700,000. There was a large increase in the oil revenues of such companies in 1935.

United Gas Public Service Company also owns directly 50% of the outstanding voting securities of Natural Gas Co., Inc., a Louisiana company which owns a natural gas distribution system in the State of Louisiana. United Gas Public Service Company also owns
201 24% of the outstanding voting securities of the Monroe Gas Company, which in turns owns the remaining 50% of the outstanding voting securities of Natural Gas Co., Inc.

United Gas Corporation also owns approximately 75% of the outstanding voting securities of Duval Texas Sulphur Company, a Texas corporation operating certain sulphur properties in the State of Texas, and all of the outstanding voting securities of Houston Gas Securities Company, a Delaware corporation which issued debentures in exchange for the bonds of Houston Gas and Fuel Company and which also owns certain debentures of United Gas Public Service Company.

United Gas Corporation also owns approximately 46% of the outstanding voting securities of Mississippi River Fuel Corporation, a Delaware corporation which is conducting and, for several years last past has conducted, a natural gas business consisting of the purchase of natural gas in th State of Louisiana and its transportation and sale at wholesale in the States of Louisiana, Arkansas, Missouri, and Illinois.

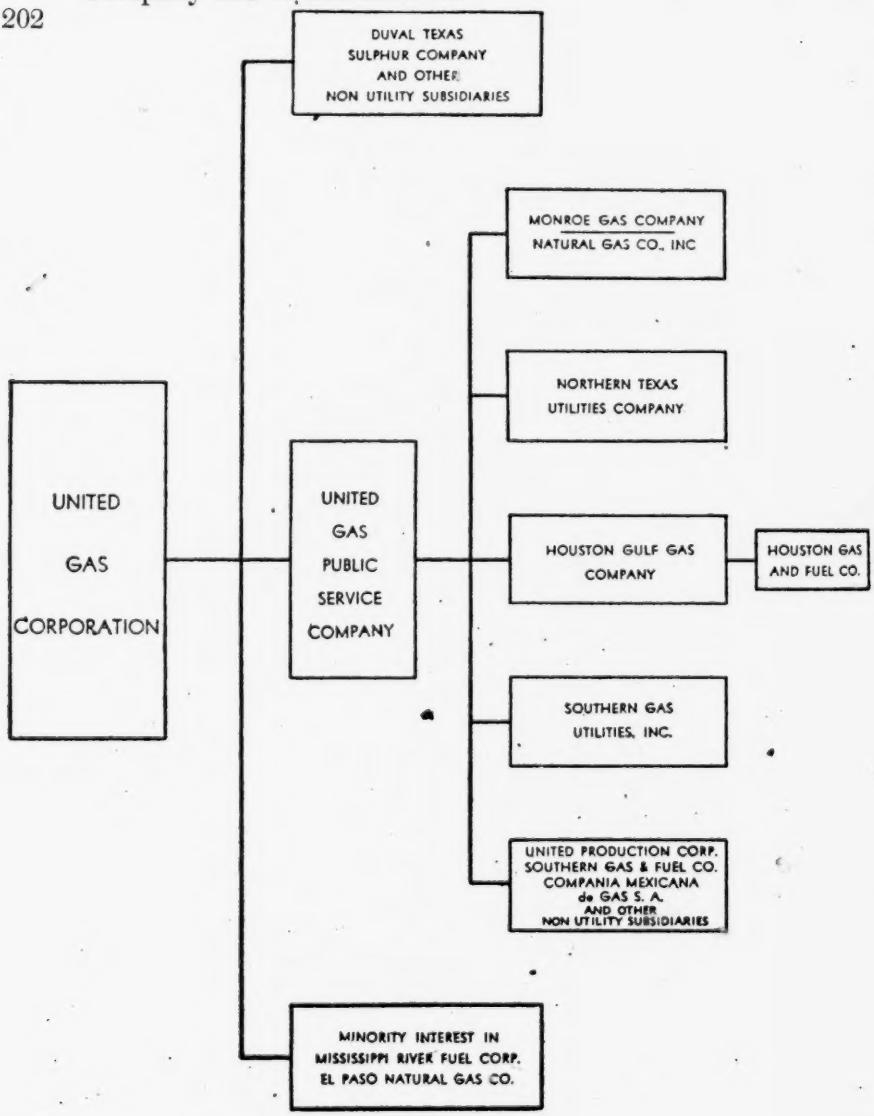
United Gas Corporation also owns, directly and indirectly, approximately 27% of the outstanding voting securities of El Paso Natural Gas Company, a Delaware corporation, which for several years last past has carried on and still carries on, directly and through subsidiaries, the business of producing, purchasing, transporting, and distributing natural gas in the States of New Mexico, Texas, and Arizona, and in the Republic of Mexico.

The statements of earnings, sales, and operations made for the year 1934 for the companies referred to in this Exhibit are for the last calendar year for which such statements are available, and are typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

The above-named direct and indirect subsidiaries of United Gas Corporation do not include certain companies engaged in sundry non-utility businesses, "name-saving" companies, or subsidiaries now in the process of dissolution, or other "shell" subsidiaries, the corporate existence of which has been continued because of franchise problems, mortgage provisions, etc.

The corporate chart set forth on the next following page shows the relationships of the subsidiaries of United Gas Corporation to that Company and to one another.

202



203 *Exhibit IV to answer*

Properties of, and Business Done by, Subsidiaries of National Power & Light Company

(a) Birmingham Electric Company, organized under the laws of Alabama in 1924 and having its principal office and place of business in Birmingham, Alabama, has for many years conducted and still conducts an electric utility business by means of a distribution system located solely within the State of Alabama. Except during emergencies, the Company purchases in the State of Alabama its entire requirements of electric energy from Alabama Power Company, a non-associate electric utility company. The aggregate sales of electric energy by Birmingham Electric Company for the year 1934 were approximately 190,000,000 kilowatt hours, and its electric operating revenues were approximately $4,000,000. The Company also conducts a steam heating service and a transportation service solely within the State of Alabama. The aggregate operating revenues of the Company, including the revenues from its electric utility business and its steam heating and transportation services, were approximately $5,900,000 for the year 1934.

(b) Carolina Power & Light Company, organized under the laws of North Carolina in 1926 and having its principal office and place of business at Raleigh, North Carolina, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located within the states of North Carolina and South Carolina. Certain of the Company's transmission lines cross the North Carolina-South Carolina state boundary, and substantial amounts of energy generated by the Company or obtained through purchase from or interchange with non-associate electric utility companies are transferred across said boundary over such lines for distribution to customers of the Company. Other transmission lines of the Company extend to the North Carolina-Tennessee boundary, where they are interconnected with transmission lines of Tennessee Public Service Company, an associate electric utility company, and through such company with

204 Appalachian Electric Power Company (a subsidiary company of American Gas and Electric Company), and also with other electric utility companies. Still other transmission lines of the Company extend to different points on the North Carolina-Virginia boundary, where they are interconnected with the transmission lines of said Appalachian Electric Power Company and with the transmission line of Roanoke River Power Company, an associate company. While the Company's principal business is the sale of electric energy at retail and at wholesale in the States of North Carolina and South Carolina, the Company sells a substantial amount of energy at wholesale to the said Tennessee Public Service Company at the Tennessee boundary, and sells and interchanges substantial amounts of surplus energy, when available, with said Appalachian Electric

Power Company at the Virginia boundary, and also with the latter company and with other electric utility companies at the Tennessee boundary. Electric energy at times is delivered by the Company to the transmission line of said Roanoke River Power Company at one point on the North Carolina-Virginia boundary and is transmitted by the Roanoke River Power Company and redelivered to the Company at another point of interconnection on the North Carolina-Virginia boundary.

The division of the Company's electric business between the States of South Carolina and North Carolina and the extent of its sales and interchanges at the North Carolina-Tennessee and the North Carolina-Virginia state boundaries in 1934 are indicated by the following relations: Electric generating capacity installed and available under contract, South Carolina 22%, North Carolina 78%; Electric energy generated and purchased, South Carolina 15%, North Carolina 65%, state boundaries 20%; Electric energy sales, South Carolina 8%, North Carolina 46%, state boundaries 46%; Electric revenue, South Carolina 18%, North Carolina 72%, state boundaries 10%; Electric customers, South Carolina 22%, North Carolina 78%.

The aggregate sales of electric energy by the Company in the year 1934 were approximately 73,000,000 kilowatt hours in the State of South Carolina, approximately 427,000,000 kilowatt hours in the State of North Carolina, and approximately 431,000,000 kilowatt hours (largely surplus hydro-electric energy) in North Carolina-Tennessee and North Carolina-Virginia deliveries. The Company's ag-
205 gregate deliveries of electric energy in 1934 from interstate transmission lines at wholesale for resale, at or across state boundaries or pursuant to interchange or other contracts under which deliveries are made in states other than North Carolina or South Carolina, were approximately 458,000,000 kilowatt hours (including large amounts of surplus and exchanged power and including the sales of 431,000,000 kilowatt hours referred to above), and the aggregate revenues therefrom were approximately $885,000, or approximately 9.5% of the Company's aggregate electric operating revenues of approximately $9,300,000 in 1934. The Company also transferred for its own account across the North Carolina-South Carolina boundary approximately 109,000,000 kilowatt hours, including approximately 9,000,000 kilowatt hours which are a part of the above 458,000,000 kilowatt hours delivered outside of North Carolina and South Carolina. The Company also renders transportation service in two cities in North Carolina and owns substantially all the capital stock of a non-utility subsidiary company which owns certain real estate and other property. The Company's aggregate operating revenues in the year 1934, including its revenues from its electric business and its transportation service, were approximately $9,600,000.

(c) Holston River Electric Company, organized under the laws of Tennessee in 1924 and having its principal office and place of business in Knoxville, Tennessee, has throughout its history conducted, and still conducts, an electric utility business by means of

transmission lines and distribution systems located solely within the State of Tennessee. The Company purchases its entire requirements of electric energy in Tennessee from Tennessee Public Service Company, an associate electric utility company, but not at an interstate transmission voltage. The aggregate sales of electric energy by the Company for the year 1934 were approximately 1,200,000 kilowatt hours and its electric operating revenues for said year were approximately $44,000.

(d) Houston Light & Power Company, organized under the laws of Texas in 1906, and having its principal office and place of business at Houston, Texas, has for many years conducted, and still conducts, an electric utility business by means of generating plants, transmission lines, and distribution systems located, and operations carried on, solely within the State of Texas. The aggregate sales of electric energy by the Company for the year 1934 were approximately 420,000,000 kilowatt hours, and its electric operating revenues therefrom were approximately $8,400,000.

206

(e) Memphis Power & Light Company, organized under the laws of New Jersey in 1922 with its principal office and place of business at Memphis, Tennessee, has for many years conducted, and still conducts, an electric utility business by means of a generating plant, transmission lines, and distribution systems located solely within the State of Tennessee and a gas utility business by means of a manufactured gas plant and a system for the distribution of manufactured and/or natural gas also located solely within the State of Tennessee. The Company's transmission lines extend to the Tennessee-Arkansas boundary and are there used for the purpose of supplying stand-by service for a small community served by another electric utility company in Arkansas, and for interchanging electric energy by and with other electric utility companies having properties outside the State of Tennessee. Said lines also extend to the Tennessee-Mississippi boundary, where the Company sells electric energy to another electric utility company.

The Company, in the year 1934, sold to consumers in the State of Tennessee approximately 162,000,000 kilowatt hours, and the revenues therefrom were approximately $4,200,000. The aggregate sales of electric energy over the Company's transmission lines extending to Tennessee-Arkansas and Tennessee-Mississippi boundaries were approximately 990,000 kilowatt hours in the calendar year 1934 and the revenues therefrom were approximately $15,000. The Company has a contract entitling it to receive stand-by service over said line extending to the Tennessee-Arkansas boundary, but in the year 1934 did not actually purchase any energy under such contract. The Company also transferred over its own lines in Tennessee energy received by it at a state boundary for delivery at another point or points at a state boundary for the account of the company from which such energy was received. The amount of electric energy so transferred in the calendar year 1934 was approximately 22,000,000 kilowatt hours.

The aggregate operating revenues of the Company, including the revenues from the gas and electric businesses done by
207 the Company, were approximately $6,400,000 for the year 1934.

(f) Roanoke River Power Company, organized under the laws of Virginia in 1925 and having its principal office and place of business at Richmond, Virginia, owns an undeveloped hydro-electric site and lands adjacent thereto located in the States of Virginia and North Carolina. The Company also owns an electric transmission line located solely in Virginia and used for the purpose of transferring energy through Virginia between two points on the Virginia-North Carolina boundary for the account of Carolina Power & Light Company, an associate electric utility company, the aggregate amount of electric energy so transferred during the year 1934 having been approximately 78,000,000 kilowatt hours. Roanoke River Power Company neither buys nor sells electric energy and has no other electric business than the ownership and operation of said transmission line.

(g) Tennessee Public Service Company, organized under the laws of Maine in 1925 and having its principal office and place of business at Knoxville, Tennessee, has throughout its history conducted, and still conducts, an electric utility business by means of generating stations, transmission lines, and distribution systems located solely within the State of Tennessee. Certain of said transmission lines extend to the Tennessee-North Carolina boundary, where they interconnect with transmission lines owned and maintained by the Carolina Power & Light Company, an associate electric utility company. The Company purchases substantially all of its requirements of electric energy from Carolina Power & Light Company by means of such interconnections. All of the electric energy so purchased and generated by the Company is distributed at retail in Tennessee by the Company and by Holston River Electric Company, an associate electric utility company which purchases from it a small amount of electric energy. From time to time the Company transmits over its own lines large amounts of electric energy between such points of interconnection with Carolina Power & Light Company and points of interconnection with the lines of other electric utility companies in Tennessee. The aggregate sales of electric energy by the Company for the year 1934 were approximately 85,000,000 kilowatt
208 hours, and its electric operating revenues were approximately $2,200,000. The Company also conducts a transportation service solely within the State of Tennessee. The aggregate operating revenues of the Company, including the revenues from its electric utility service and its transportation service, were approximately $2,800,000 for the year 1934.

(h) West Tennessee Power & Light Company, organized under the laws of the State of Florida in 1928 and having its principal office and place of business in Jackson, Tennessee, has for many years

conducted, and still conducts, an electric utility business by means of generating plants, transmission lines, and distribution systems, and a natural gas utility business by means of gas distribution systems and a stand-by gas plant, all of its property being located, and all of its operations conducted, solely within the State of Tennessee. The Company purchases in Tennessee approximately 65% of its electric energy from Memphis Power & Light Company, an associate electric utility company. The aggregate sales of electric energy by the Company for the year 1934 were approximately 13,600,000 kilowatt hours and its electric operating revenues were approximately $530,000. The Company also conducts a transportation service and renders water service and ice service solely within the State of Tennessee. The aggregate operating revenues of the Company, including the revenues from its electric and gas utility service and water transportation and ice businesses, were approximately $760,000 for the year 1934.

National Power & Light Company also owns 129,720 shares of the $6 Preferred Stock and 2,918,082 shares of the Common Stock (constituting more than 99 per centum of the outstanding voting securities thereof) of:

(i) Lehigh Power Securities Corporation, a corporation organized and existing under the laws of Delaware which owns directly or indirectly all or substantially all of the common stock of the following electric and gas utility companies which are conducting, and for several years last past have conducted, an electric or gas utility business in Pennsylvania as hereinafter described.

(i) (1) Lehigh Valley Transit Company, organized under the laws of the State of Pennsylvania in 1905 and with its principal
209 office and place of business in Allentown, Pennsylvania, has for many years rendered and still renders transportation service in various communities in the State of Pennsylvania, such transportation service constituting its principal business. This Company also owns a steam-electric generating station which has been operated from time to time as stand-by equipment, as well as certain electric distribution lines, all located solely within the State of Pennsylvania, over which it distributes electric energy for its own uses and for delivery to Pennsylvania Power & Light Company, an associate electric utility company.

Lehigh Valley Transit Company also owns all or substantially all of the capital stock of Easton Consolidated Electric Company, a New Jersey corporation, which in turn owns, among other securities, all the capital stock of The Edison Illuminating Company of Easton, which in 1900 leased its electric distribution systems in and adjacent to the City of Easton, Pennsylvania, to the Metropolitan Edison Company under an agreement terminating in 1999.

Lehigh Valley Transit Company also owns all or substantially all the capital stock of certain subsidiary companies owning and operating motor buses and amusement park, toll bridge, and other proper-

ties located and operated solely in Pennsylvania, except for certain incidental bus service across the Pennsylvania-New Jersey boundary (the aggregate revenues from which were approximately $74,000 in 1934), and one tract of land located in New Jersey. The aggregate operating revenues of Lehigh Valley Transit Company and all of its subsidiary companies in the year 1934 were approximately $2,400,000.

On October 30, 1935, Lehigh Valley Transit Company and Easton Transit Company, one of its subsidiaries owning facilities for transportation service, filed petitions in a proceeding in the United States District Court for the Eastern District of Pennsylvania for reorganization under Section 77B of the Bankruptcy Act as amended for the purpose of extending certain maturing obligations. Said proceedings are still pending in said Court and neither of said companies has received a final discharge.

(i) (2) Pennsylvania Power & Light Company, organized
210 under the laws of Pennsylvania in 1920 and with its principal office and place of business at Allentown, Pennsylvania, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within Pennsylvania and a gas utility business by means of manufactured gas plants and systems for the transmission and distribution of manufactured and/or natural gas, such plants and systems being located solely within Pennsylvania. One of the Company's transmission lines extends to the Pennsylvania-New Jersey boundary and is used for the purpose of interchanging electric energy with a non-associate electric utility company having properties in the State of New Jersey.

The aggregate deliveries and receipts of electric energy between the Company and said non-associate electric utility company having properties in the State of New Jersey were, respectively, approximately 26,000,000 kilowatt hours and 18,000,000 kilowatt hours in the year 1934. The Company also purchased in the year 1934 at the Pennsylvania-New York boundary, for an isolated distribution system in Pennsylvania approximately 13,000 kilowatt hours, the aggregate revenues from the sale of which in that year were $540. The Company made no other interstate purchases or sales. In 1935 the Company extended its lines to this particular community and the state boundary purchase was discontinued. The aggregate sales of electric energy by the Company in Pennsylvania were approximately 1,300,000,000 kilowatt hours in the year 1934 and its aggregate electric operating revenues were approximately $31,600,000.

The Company has also carried on for a number of years, and still carries on, the business of rendering steam heating service in two communities in Pennsylvania. Its aggregate operating revenues, including the revenues from its electric, gas, and steam heating businesses, were approximately $34,000,000 for the year 1934.

Pennsylvania Power & Light Company also owns all, or substantially all, of the outstanding voting securities of, and controls the

operations of, the following companies, all the properties of which are located, and all the operations of which are conducted, solely within Pennsylvania: (1) Lehighton Electric Light and Power Company, a Pennsylvania corporation which carries on an
211 electric utility business by means of a distribution system; (2) North Branch Development Company, a Pennsylvania corporation which carries on a natural gas production business by means of wells and other production facilities and (3) Susquehanna Gas Company, a Pennsylvania corporation which owns certain natural gas transmission lines and which transmits natural gas from North Branch Development Company to Pennsylvania Power & Light Company. Pennsylvania Power & Light Company also owns 50 per centum of the capital stock of Stanton Operating Company, which is employed by Pennsylvania Power & Light Company and The Scranton Electric Company to furnish the labor and materials required in the operation of an electric generating plant near Pittston, Pennsylvania, approximately one-half of which is owned by Pennsylvania Power & Light Company itself. Pennsylvania Power & Light Company likewise owns directly and indirectly approximately 27 per centum of the capital stock of Conestoga Transmission Company, a Pennsylvania corporation which owns a transmission line, located solely within Pennsylvania, held and operated by Pennsylvania Power & Light Company under the provisions of a 999-year lease.

Pennsylvania Power & Light Company also owns all or substantially all of the capital stock of certain subsidiary companies rendering water and other services, holding land, and carrying on certain other businesses solely in Pennsylvania, except for certain relatively small parcels of land held in New Jersey adjacent to Pennsylvania.

National Power & Light Company also owns all or substantially all of the stock of South Texas Utilities Company, a Texas company, which conducts a water and ice service solely within the State of Texas. The operating revenues of said Company in 1934 were approximately $86,000.

The statements of earnings, sales, and operations made for the year 1934 for the companies referred to in this Exhibit are for the last calendar year for which such statements are available and typical in their relationships to usual operations. Except as herein noted, similar statements for 1935 would not show substantial variation.

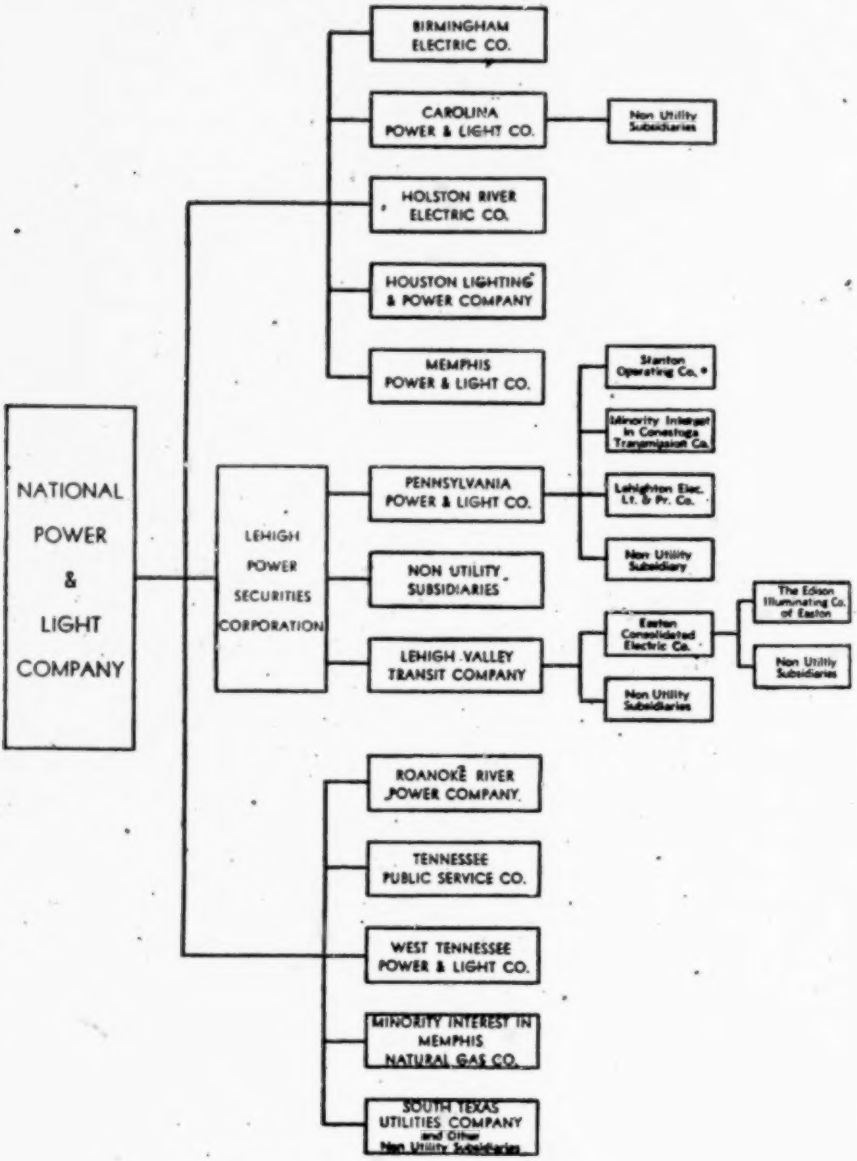
The above named direct and indirect subsidiaries of National
212 Power & Light Company do not include certain minor companies holding land or conducting other businesses or "name-saving" companies or subsidiary companies now in the process of dissolution or other "shell" subsidiary companies the corporate existence of which has been continued because of franchise problems, mortgage provisions, etc.

The corporate chart set forth on the next following page shows the relationships of the subsidiaries of National Power & Light Company herein described to that Company and to one another.

213 *Exhibit V to answer*

Properties of, and Business Done by, Subsidiaries of American Gas and Electric Company

(a) Atlantic City Electric Company, organized under the laws of New Jersey in 1924 with its principal office and place of business at



* 50% OWNED BY PENNSYLVANIA POWER & LIGHT COMPANY; REMAINING 50% OWNED BY THE SCRANTON ELECTRIC COMPANY

Atlantic City, New Jersey, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely

within the State of New Jersey. The aggregate sales of electric energy by the Company in the year 1934 were approximately 165,000,000 kilowatt hours, and the operating revenues therefrom were approximately $6,450,000. The Company also has carried on for a number of years and still carries on the business of furnishing heating service in the city of Atlantic City, New Jersey. The aggregate operating revenues of the Company, including the revenues from its electric business and heating service, were approximately $6,550,000 for the year 1934.

The Company owns 50 per centum of the capital stock of the Deepwater Operating Company and 50 per centum of the capital stock of South Pennsgrove Realty Company. The Deepwater Operating Company owns no utility assets and is engaged solely in the operation of the electric generating plant at Deepwater, near Pennsgrove, New Jersey, approximately one-half of which is owned by the Atlantic City Electric Company. Deepwater Operating Company sells steam at the wall of said electric generating plant and electric energy at the plant substation to one industrial plant for use wholly within the State of New Jersey and furnishes electric energy to the Atlantic City Electric Company and to Deepwater Light and Power Company, a nonassociate electric utility company which owns the other half of the said electric generating plant. The South Pennsgrove Realty Company holds presently idle land adjacent to the Deepwater generating plant.

(b) Indiana General Service Company, organized under the laws of Indiana in 1913 and with its registered office at Alexandria, Indiana, and its principal place of business at Marion, Indiana, has for many years conducted and still conducts an electric utility business by
214 means of generating plants, transmission lines, and distribution systems located solely within the state of Indiana. The Company, in the year 1934, generated with its own facilities and purchased from sources within the state of Indiana approximately 146,000,000 kilowatt hours of electric energy, all for sale to consumers in the state of Indiana, and the operating revenues therefrom were approximately $2,900,000. The Company also has carried on for a number of years, and still carries on, the business of furnishing steam or hot water heating service in various communities within the state of Indiana. The aggregate operating revenues of the Company, including the revenues from heating service, were approximately $3,075,000 for the year 1934.

(c) Indiana & Michigan Electric Company, organized under the laws of Indiana in 1925, and with its principal office and place of business at South Bend, Indiana, has since its organization conducted, and still conducts, an electric utility business by means of generating plants, transmission lines, and distribution systems located within the States of Indiana and Michigan. The Company owns certain transmission lines which cross the Indiana-Michigan boundary. Substantial amounts of electric energy are transmitted by the Company across such state boundary and are ultimately sold to retail

customers of the Company or at wholesale. The Company also has certain transmission lines extending to the Indiana-Ohio boundary, which are used for the purpose of exchanging electric energy with and receiving electric energy from an associate electric utility company having properties outside the State of Indiana.

The division of the Company's electric business between the States of Indiana and Michigan in 1934 is indicated by the following relations: Electric Generating Capacity: Indiana, 90% ; Michigan, 10%. Electric Energy Generated and Purchased: Indiana, 19% ; Michigan, 7% ; at state boundaries from other states, 74%.. Electric Energy Sales: Indiana, 86%, Michigan, 12% ; at state boundaries, 2%. Electric Revenue: Indiana, 77% ; Michigan, 22% ; at state boundaries, 1%. Customers: Indiana, 70% ; Michigan, 30%, except two customers at state boundaries. The aggregate sales of electric energy by the Company in the year 1934 were approximately 389,000,000 kilowatt-
hours in the State of Indiana, with revenues therefrom of
215 approximately $4,900,000; approximately 57,000,000 kilowatt-hours in the State of Michigan, with revenues therefrom of approximately $1,450,000; and approximately 8,242,000 kilowatt-hours at state boundaries, with revenues therefrom of approximafely $60,000. The Company in 1934 transferred to or across state boundaries for its own account or for sale at wholesame approximately 60,000,000 kilowatt-hours. It sold at or across state boundaries at wholesale for resale 8,242,000 kilowatt-hours (practically all of which was delivered to non-associate companies), or less than 2% of the total number of kilowatt-hours which it sold in that year.

(d) The Ohio Power Company, organized under the laws of Ohio in 1907, with its principal office and place of business at Canton, Ohio, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems in Ohio and one generating station located on the West Virginia side of the Ohio River, which station is connected to the Company's transmission lines in Ohio. Substantial amounts of electric energy are transmitted by the Company from its West Virginia generating station, for itself and for account of others, across the Ohio-West Virginia boundary and are ultimately delivered to others or sold to retail or wholesale customers of the Company. The Company also has certain transmission lines extending to the Ohio-Indiana boundary, to the Ohio-Kentucky boundary, and to the Ohio-West Virginia boundary, which are used for the purpose of selling electric energy to, exchanging electric energy with, and receiving electric energy from, associate electric utility companies having properties outside the State of Ohio.

The division of the Company's electric business between the states of Ohio and West Virginia in 1934 is indicated by the following relations: Electric Generating Capacity, Ohio, 76% ; West Virginia, 24%. Electric Energy Generated and Purchased, Ohio, 69% ; West Virginia, 23% ; at state boundaries, 8%. Electric Energy Sales, Ohio, 49% ; West Virginia, 5% ; in West Virginia for customers in Ohio,

19%; at state boundaries, 27%. Electric Revenue, Ohio, 84%; West Virginia, 5%; in West Virginia for customers in Ohio, 7%; at state boundaries, 4%. Customers, Ohio, approximately 215,000 customers; West Virginia or at state boundaries, 5 customers. The ag-
216 gregate sales of electric energy by the Company in the year 1934 were approximately 887,000,000 kilowatt-hours in the State of Ohio, with revenues therefrom of approximately $16,400,000; approximately 98,000,000 kilowatt-hours in the State of West Virginia, with revenues therefrom of approximately $800,000; approximately 340,000,000 kilowatt-hours in West Virginia for customers in Ohio with revenues therefrom of approximately $1,460,000; and approximately 490,000,000 kilowatt-hours at state boundaries with revenues therefrom of approximately $890,000. The Company in 1934 transferred to or across state boundaries for its own account, for the account of others or for sale to others approximately 838,000,000 kilowatt hours. Of this amount it sold at or across state lines at wholesale for resale approximately 490,000,000 kilowatt hours, all of which was delivered to associate companies, and transmitted across state boundaries for the account of others approximately 340,000,000 kilowatt hours. The balance of the electric energy transmitted by the Company to or across state boundaries was sold to retail customers of the Company. The Company also conducts a steam heating business in several communities and a water service in one community in the State of Ohio. The aggregate operating revenues of the Company, including revenues from its electric business, and from its heating and water service, were approximately $19,700,000 for the year 1934.

The Company owns 50 per centum of the capital stock of Windsor Power House Coal Company and 50 per centum of the capital stock of Beech Bottom Power Company, Inc. Beech Bottom Power Company, Inc., owns no utility assets and is engaged solely in the operation of an electric generating plant at Power, West Virginia, approximately one-half of which is owned by The Ohio Power Company. Beech Bottom Power Company, Inc., furnishes electric energy to The Ohio Power Company at the said electric generating plant. Such electric energy is either delivered to others at the said electric generating plant, for distribution or use in West Virginia and in Ohio, or transmitted by The Ohio Power Company from West Virginia into Ohio for distribution. Beech Bottom Power Company, Inc., also furnishes energy to the West Penn Power Company, a non-associate electric utility company which owns the other half of said electric generating plant. The Windsor
217 Power House Coal Company owns all the capital stock of Windsor Coal Company. The Windsor Power House Coal Company and the Windsor Coal Company own and/or operate a "captive" coal mine at Power, West Virginia, which furnishes fuel to the adjacent electric generating plant.

(e) The Scranton Electric Company, organized under the laws of Pennsylvania in 1928 with its principal office and place of business

at Scranton, Pennsylvania, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Pennsylvania. The aggregate sales of electric energy by the Company for the year 1934 were approximately 227,000,000 kilowatt-hours, and the operating revenues therefrom were approximately $5,750,000. The Company also has carried on for a number of years and still carries on the business of furnishing steam heating service in the city of Scranton, Pennsylvania. The aggregate operating revenues of the Company, including revenues from its electric business and heating service, were approximately $6,175,000 for the year 1934.

The Company owns fifty per cent. of the capital stock of Stanton Operating Company, which company owns no utility assets and is employed by The Scranton Electric Company and Pennsylvania Power & Light Company to furnish the labor and materials required in the operation of an electric generating plant near Pittston, Pennsylvania, approximately one-half of which is owned by The Scranton Electric Company. Stanton Operating Company furnishes electric energy to The Scranton Electric Company and to the Pennsylvania Power & Light Company, an electric utility company, which owns the other half of said electric generating plant.

(f) Wheeling Electric Company, organized under the laws of West Virginia in 1905 with its principal office and place of business at Wheeling, West Virginia, has since its organization conducted and still conducts an electric utility business by means of a generating plant, transmission lines, and distribution systems located within the States of West Virginia and Ohio. The Company owns certain transmission lines in West Virginia which extend to the West Virginia-Ohio boundary, and owns distribution lines which cross
218 the West Virginia-Ohio boundary. The aggregate sales of electric energy by the Company in West Virginia and Ohio in 1934 were approximately 73,000,000 kilowatt-hours in the case of West Virginia, with operating revenues therefrom of approximately $2,000,000, and approximately 8,000,000 kilowatt-hours in the case of Ohio, with operating revenues therefrom of approximately $300,000. All of the electric energy sold by the Company in Ohio was generated by the Company or by The Ohio Power Company in West Virginia and transmitted to Ohio by the Company or by The Ohio Power Company for the account of the Company.

(g) Appalachian Electric Power Company, organized under the laws of Virginia in 1926 and having its principal office and place of business at Roanoke, Virginia, has since its organization conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution system located within the states of Virginia and West Virginia and, since the end of 1934, a short length of transmission line in the state of Tennessee. The Company owns certain transmission lines which cross the Virginia-West Virginia boundary and another transmission line which

crosses the Virginia-Tennessee boundary. Substantial amounts of electric energy are transmitted by the Company across such state boundaries and are ultimately sold to retail customers of the Company or at wholesale.

The Company also has transmission lines extending to the West Virginia-Ohio boundary, to the West Virginia-Kentucky boundary, to the Virginia-Kentucky boundary and to the Virginia-North Carolina boundary, which are used for the purpose of selling electric energy to, exchanging electric energy with, and receiving electric energy from associate electric utility companies and Carolina Power & Light Company, an electric utility company having properties outside the states of Virginia and West Virginia.

The division of the Company's electric business between the states of Virginia and West Virginia in 1934 is indicated by the following relations: Electric Generating Capacity: West Virginia, 61%; Virginia 39%; Electric Energy Generated and Purchased: West Virginia, 45%; Virginia 26-; at state boundaries, 29%; Electric Energy Sales: West Virginia, 58%; Virginia, 19%; at state
219 boundaries, 23%; Electric Revenue: West Virginia, 68%; Virginia, 25%; at state boundaries, 7%; Customers: West Virginia, 62%; Virginia, 38%, except two customers at state boundaries.

The aggregate sales of electric energy by the Company in the calendar year 1934 were approximately 810,000,000 kilowatt hours in the State of West Virginia, with revenues therefrom of approximately $12,100,000; approximately 250,000,000 kilowatt hours in the state of Virginia, with revenues therefrom of approximately $4,400,000; and approximately 334,000,000 kilowatt hours at state boundaries, with revenues therefrom of approximately $1,100,000. The Company transferred to or across state boundaries for its own account or for sale to others in 1934 approximately 972,000,000 kilowatt hours. Of this amount it sold at or across state lines at wholesale for resale approximately 334,000,000 kilowatt hours, all of which was delivered to associate companies. Of this amount, it also delivered to Carolina Power & Light Company itself at the Virginia-North Carolina boundary or to Tennessee Public Service Company at Kingsport, Tennessee, for the account of said Carolina Power & Light Company, approximately 16,000,000 kilowatt hours of electric energy. In 1935 the Company made sales of electric energy within the State of Tennessee, which, in 1934, were made as, and are shown herein as, sales at a state boundary, and in that year amounted to approximately 30,000,000 kilowatt hours, with revenues therefrom of approximately $75,000.

Appalachian Electric Power Company owns all of the capital stock and all of the bonds of the following electric utility companies which are conducting, and for several years last past have conducted, electric utility businesses in the states hereinafter mentioned as hereinafter described:

(g) (1) Kentucky and West Virginia Power Company, Inc., organized under the laws of Kentucky in 1919 and with its principal office and place of business at Ashland, Kentucky, has for many years conducted and still conducts an electric utility business by means of generating plants, transmission lines, and distribution systems located solely within the State of Kentucky. Certain of the Company's transmission lines extend to the Kentucky-Virginia boundary, to the Kentucky-West Virginia boundary, and to the
220 Kentucky-Ohio boundary, and are used for the purpose of exchanging electric energy with and receiving electric energy from associate electric utility companies having properties outside the State of Kentucky.

The Company, in the year 1934, generated with its own facilities approximately 38,000,000 kilowatt-hours and purchased approximately 138,000,000 kilowatt-hours generated outside the State of Kentucky, all for sale to consumers in the State of Kentucky. The operating revenues from such electric energy sales were approximately $2,700,000, and the amount paid for energy purchased from sources outside the State of Kentucky, in 1934, was approximately $870,000. The Company in 1934 delivered approximately 6,000,000 kilowatt hours of electric energy to associate companies for resale in states other than Kentucky.

(g) (2) Kingsport Utilities, Incorporated, organized under the laws of Virginia in 1917 and with its principal office and place of business at Kingsport, Tennessee, has since its organization conducted and still conducts an electric utility business by means of a generating plant, transmission lines, and distribution systems located solely within the State of Tennessee. One of the Company's distribution lines extends to the Tennessee-Virginia boundary, at which point electric energy is sold to an associate electric utility company having properties outside the State of Tennessee. In the year 1934 such sales aggregated approximately 2,000 kilowatt-hours, with revenues therefrom of less than $100.

The Company in the year 1934 purchased approximately 31,500,000 kilowatt-hours generated outside of the State of Tennessee, all (except a negligible amount to Virginia) for sale to consumers in the State of Tennessee, and the operating revenues therefrom were approximately $430,000, and the net amount paid for energy purchased from sources outside the State of Tennessee in 1934 was approximately $75,000.

Appalachian Electric Power Company also owns all of the capital stock of the West Virginia Power Company, a corporation organized under the laws of West Virginia in 1912 which owns certain real estate and rights and has made sundry investigations, etc., in connection with proposed hydro-electric developments on the Kanawha River in the State of West Virginia, and all the capital stock
221 of the Radford Limestone Company, organized under the laws of Virginia in 1930, which operates on a commercial basis a stone quarry near Radford, Virginia, owned by the Appalachian

Electric Power Company as part of a proposed hydro-electric development.

American Gas and Electric Company also owns all of the outstanding stock of the following companies:

Twin Branch Railroad Company, a corporation organized under the laws of Indiana in 1925 which has for many years conducted and still conducts a railroad service in the vicinity of Michawaka, Indiana. The operating revenues of said Company, in 1934, were approximately $12,000.

St. Joseph Heating Company, a corporation organized under the laws of Indiana in 1912, which for many years conducted and still conducts a steam heating service in the city of South Bend, Indiana. The operating revenues of said Company, in 1934, were approximately $100,000.

Southern Ohio Public Service Company, a corporation organized under the laws of Ohio in 1925, which for many years has owned and now owns an electric generating plant in the city of Zanesville, Ohio, the entire output of which is sold at wholesale in Ohio to The Ohio Power Company, an associate company. The gross operating revenue of said Company in the year 1934 was less than $12,000.

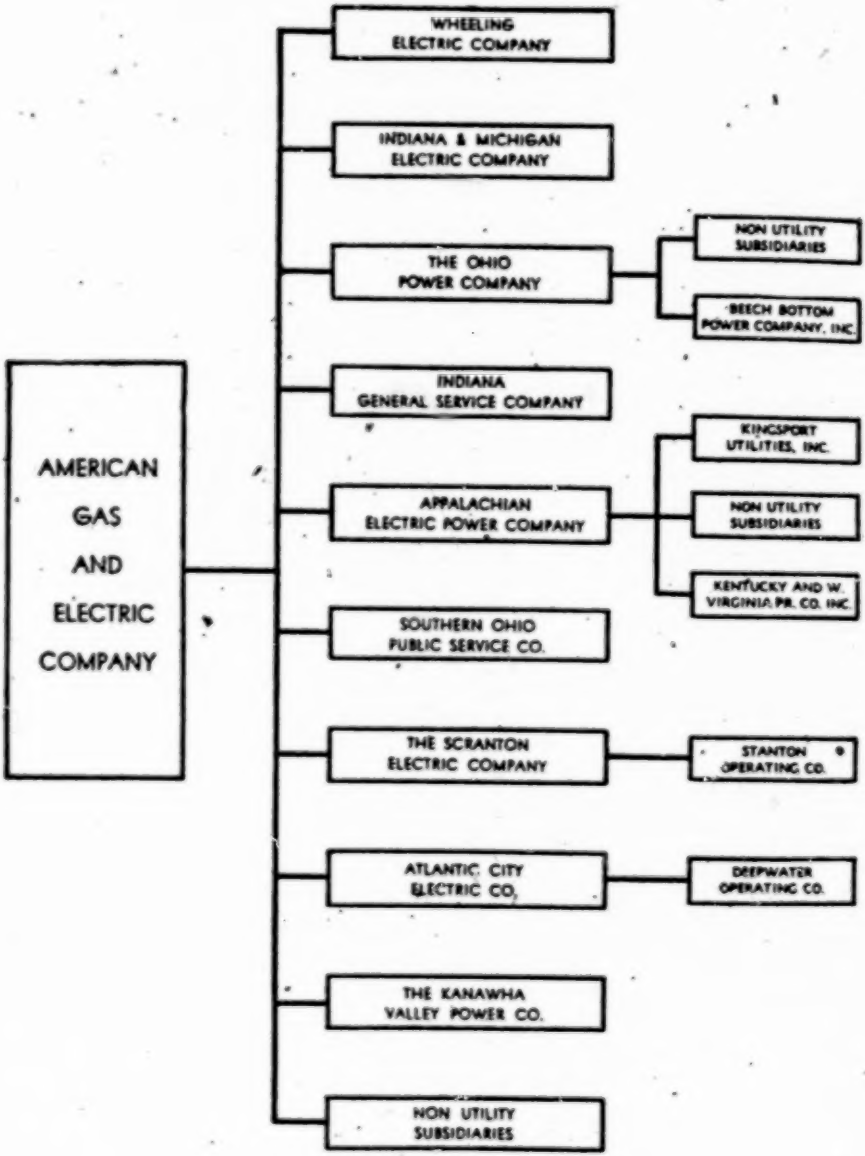
The Kanawha Valley Power Company, a corporation organized under the laws of West Virginia in 1931 which operates electric generating plants in West Virginia and sells the entire output of electric energy from such plants to Appalachian Electric Power Company, an associate company.

American Gas and Electric Company also owns fifty per cent. of the stock of the West Pittston-Exeter Railroad Company, a corporation organized under the laws of Pennsylvania in 1925, which has for many years conducted and still conducts a railroad service in the vicinity of Pittston, Pennsylvania. The operating revenues of said Company, in 1934, were approximately $64,000.

The statements of earnings, sales, and operations made for the year 1934 for the companies referred to in this Exhibit are for the last calendar year for which such statements are available, and are typical in their relationships to usual operations. Except as
222 herein noted, similar statements for 1935 would not show substantial variation.

The above-named direct and indirect subsidiaries of American Gas and Electric Company do not include certain minor subsidiary companies holding land or conducting other businesses, or subsidiary companies now in the process of dissolution or other "shell" subsidiary companies, the corporate existence of which has been continued because of mortgage provisions, etc.

The corporate chart set forth on the next following page shows the relationships of the subsidiary companies of American Gas and Electric Company herein described to that Company and to one another.



* 50% OWNED BY THE SCRANTON ELECTRIC COMPANY; REMAINING 50% OWNED BY PENNSYLVANIA POWER & LIGHT COMPANY

223 *Exhibit VI to answer*

Statement of Capitalization of Holding Company Defendants (Other Than Defendant Electric Bond and Share Company) and the Voting Stock Ownership of Defendant Bond and Share in Such Companies as of November 30, 1935

Defendant American Power & Light Company has outstanding $43,420,500 principal amount of Gold Debenture Bonds, American 6% Series, due March 1, 2016; $4,159,000 principal amount of the 6% Gold Debenture Bonds, Series A, due March 1, 2022, of Southwestern Power & Light Company assumed by the American Company; 793,581-2/10ths shares of Preferred Stock ($6), including 37-2/10ths shares represented by outstanding scrip), 978,444 shares of $5 Preferred Stock and 3,008,511-27/50ths shares of Common Stock (including 3,101-27/50ths shares represented by outstanding scrip). Each share of stock of all classes has equal voting power. Defendant Bond and Share owns 51,840 shares of the $5 Preferred Stock and 937,213 shares of the common stock of the defendant American Company, constituting 20.70 per centum of the outstanding voting securities of said company.

Defendant Electric Power & Light Corporation has outstanding $31,000,000 principal amount of Gold Debentures, 5% Series, due 2030; 514,174 shares of $7 Preferred Stock, 255,430⅔ shares of $6 Preferred Stock (including 4⅔ shares represented by outstanding scrip); 83,539 shares of Second Preferred Stock, Series A ($7); 3,418,961½ shares of Common Stock and Option Warrants to purchase 569,654 shares of Common Stock. Each share of $7 Preferred Stock, $6 Preferred Stock and Common Stock has equal voting power. Defendant Bond and Share owns 485 shares of the $7 Preferred Stock and 1,976,638 shares of the Common Stock of the defendant Electric Company, constituting 47.20 per centum of the outstanding voting securities of said Company. In addition, defendant Bond and Share own 13,905 shares of said Second Preferred Stock, Series A ($7), and 393,408 of said Option Warrants of said Electric Company.

Defendant Power Securities Corporation has outstanding $4,524,-
100 principal amount of Collateral Trust Gold Bonds, Ameri-
224 can 6% Series, due June 1, 1949; 58,054 shares of Second Preferred ($6) Stock and 150,000 shares of Common Stock. Each share of common stock and second preferred stock has equal voting power. Defendant Bond and Share owns none of the outstanding voting securities of said Power Securities Corporation, but defendant Electric Company owns all of said outstanding voting securities. In addition, defendant Electric Company owns $1,874,900 of the above mentioned Collateral Trust Gold Bonds.

Defendant United Gas Corporation has outstanding $21,250,000 principal amount of 6% Notes due July 20, 1936; a 6% Demand

Note in the principal amount of $25,925,000, a 6% Note due November 30, 1938, in principal amount of $3,000,000; 449,822 shares of $7 Preferred Stock; 884,680 shares of $7 Second Preferred Stock, 7,818,959 shares of Common Stock and Option and Stock Purchase Warrants to purchase 4,867,982 shares of Common Stock. Each share of $7 Second Preferred Stock is entitled to three votes and each share of common stock is entitled to one vote. Defendant Bond and Share owns said 6% Demand Note for $25,925,000, said 6% Note for $3,000,000; 17,310 shares of the $7 Preferred Stock, 752,666 shares of the Common Stock and 151,005 of the Option Warrants of said United Company, constituting 7 percentum of the outstanding voting securities of said Company, while the defendant Electric Company owns 884,610 shares of the $7 Second Preferred Stock and 3,795,086 shares of the Common Stock of said United Company, constituting 61.58 percentum of the outstanding voting securities of said Company.

Defendant National Power & Light Company has outstanding $9,500,000 principal amount of Six Per Cent. Gold Debentures, Series A, due August 1, 2026; $15,000,000 principal amount of Five Per Cent. Gold Debentures, Series B, due May 1, 2030; 279,716 shares of $6 Preferred Stock and 5,456,117 shares of Common Stock. Each share of common stock is entitled to one vote. Defendant Bond and Share owns 2,540,438 shares of the common stock of said National Company, constituting 46.56 per centum of the outstanding voting securities of said Company.

Defendant Lehigh Power Securities Corporation has outstanding $25,000,000 principal amount of Six Per Cent. Gold Debentures,
Series A, due February 1, 2026; $480,000 principal amount of
225 the Fifty-Year Five Per Cent. Collateral Trust Mortgage
Gold Bonds, due July 1, 1951, of Lancaster County Railway and Light Company assumed by the Lehigh Company; 130,000 shares of $6 Preferred Stock and 2,928,280 shares of Common Stock. Each share of stock of all classes has equal voting power. Defendant Bond and Share owns none of the outstanding voting securities of said Lehigh Company but defendant National Company owns 129,723 shares of the $6 Preferred Stock and 2,918,082 shares of the Common Stock of said Lehigh Company, constituting more than 99 per centum of the outstanding voting securities of said Company.

Defendant Easton Consolidated Electric Company has outstanding $1,237,000 principal amount of Collateral Trust 5% Gold Bonds, due May 1, 1949, and 30,000 shares of capital stock. Defendant Bond and Share owns none of the outstanding voting securities of said defendant Easton Consolidated Electric Company, but Lehigh Valley Transit Company (98.18% of the outstanding voting securities of which are owned by defendant Lehigh Company) owns 99.96% of said capital stock of defendant Easton Consolidated Electric Company. In addition, Lehigh Valley Transit Company owns $991,000 principal amount of the above mentioned Collateral Trust Gold

Bonds and defendant Lehigh Company owns $32,500 principal amount of such bonds.

Defendant American Gas and Electric Company has outstanding $50,000,000 principal amount of 5% Debentures, due 2028. It also has outstanding, exclusive of stock reacquired and held in its treasury, 355,623 shares of $6 Preferred Stock and 4,482,737 31/50 shares of Common Stock. Each share of preferred stock and common stock has equal voting power. Defendant Bond and Share owns 846,985 shares of the common stock of said American Gas, constituting 17.51 per centum of the outstanding voting securities of said Company.

226 In the District Court of the United States for the Southern District of New York

In Equity. No. E81-378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION, AND UNITED GAS CORPORATION, DEFENDANTS; AND POWER SECURITIES CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY, AND EASTON CONSOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS

Upon the annexed stipulation it is hereby

Ordered that Homer S. Cummings, individually and as Attorney General of the United States; James A. Farley, individually and as Postmaster General of the United States; James M. Landis, Robert E. Healy, George C. Mathews, and James D. Ross, individually and as members of the Securities and Exchange Commission, shall be brought into and made parties to this suit as cross-defendants to the counterclaim and cross-bill of the defendants; and it is

Further ordered that Central Arizona Light and Power Company; Montana Power Gas Company, Indiana & Michigan Electric Company; Spokane Central Heating Company and Spokane United Railways, be, and they are hereby, permitted to intervene as additional defendants in this suit, and adopt as their own the pleadings of the defendants herein, with leave to set forth such additional allegations as may be necessary in their bill of intervention which shall be taken as part of their pleadings; and it is

227

Further ordered that such additional allegations shall be deemed to have been denied by the plaintiff and the cross-defendants without further pleading on their part.

Dated January 22, 1936.

JULIAN W. MACK,
U. S. C. J.

[Title of Court and Cause.]

Stipulation as to Additional Parties

It appearing that the defendants and intervening defendants herein in their answer to the amended and supplemental bill of complaint propose to include in a separate defense a counterclaim and cross-bill, the issues presented by which may require the presence of parties other than those named in the said amended and supplemental bill, to wit, Homer S. Cummings, Attorney General of the United States; James A. Farley, Postmaster General of the United States; James M. Landis; Robert E. Healy; George C. Mathews; and James D. Ross, who are members of and constitute the Securities and Exchange Commission (the plaintiff herein):

It is hereby stipulated, without prejudice to the right of the plaintiff or said individuals as defendants to said counterclaim and cross-bill, to assert as a defense thereto any matter of law or fact appearing upon the face thereof, or otherwise, except absence of necessary parties defendant to said counterclaim and cross-bill, improper venue, or lack of service of process; that an order may be entered herein bringing in said above named individuals as cross-defendants to said counterclaim and cross-bill; and that the undersigned, solicitors for the plaintiff, without the service of subpoenas or other process, will appear on behalf of the said above named individual members of the Securities and Exchange Commission and Homer S. Cummings, Attorney General of the United States, will appear on his own behalf and on behalf of James A. Farley, Postmaster General of the United States, and will answer said counterclaim and cross-bill on their behalf; and that this stipulation shall constitute such appearances on behalf of all of said
228 cross-defendants. It is agreed that in no event shall any personal judgment, decree, or order for costs be entered against the above named individuals, and defendants expressly waive any right that they may have, or may obtain by virtue of any order or decree subsequently entered herein to tax costs against said individuals.

It is further stipulated that Central Arizona Light and Power Company, Montana Power Gas Company, Indiana & Michigan Electric Company, Spokane Central Heating Company, and Spokane United Railways may be allowed to intervene as additional defendants, and to adopt as their own the pleadings of the defendants herein, and to set forth such additional allegations as may be neces-

sary in their bill of intervention which shall be taken as part of their pleading, and such additional allegations shall be deemed to be denied by the plaintiff and the cross-defendants without further pleadings on their part.

The annexed Order may be entered without notice.

Dated January 21, 1936.

JOHN J. BURNS,
By R. H. J.,
ROBERT H. JACKSON,
Solicitors for Plaintiff, The Securities and Exchange Commission.

SIMPSON, THACHER & BARTLETT,
THOMAS D. THACHER,
JOHN F. MACLANE,
Solicitors for Defendants.

HOMER S. CUMMINGS,
By R. H. J.,
Solicitor for Cross-Defendants Homer S. Cummings, Attorney General of the United States, and James A. Farley, Postmaster General of the United States.

JOHN J. BURNS,
By R. H. J.,
ROBERT H. JACKSON,
Solicitors for Cross-Defendants James M. Landis, Robert E. Healy, George C. Mathews, and James D. Ross, Members of and Constituting the Securities and Exchange Commission.

229 In the District Court of the United States for the Southern District of New York

In Equity. No. E81–378

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

vs.

ELECTRIC BOND AND SHARE COMPANY, AMERICAN GAS AND ELECTRIC COMPANY, AMERICAN POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION AND UNITED GAS CORPORATION, DEFENDANTS; AND POWER SECURITIES CORPORATION, IDAHO POWER COMPANY, UTAH POWER & LIGHT COMPANY, UNITED GAS PUBLIC SERVICE COMPANY, HOUSTON GULF GAS COMPANY, THE MONTANA POWER COMPANY, NEBRASKA POWER COMPANY, PACIFIC POWER & LIGHT COMPANY, LEHIGH POWER SECURITIES CORPORATION, APPALACHIAN ELECTRIC POWER COMPANY, THE OHIO POWER COMPANY, THE SCRANTON ELECTRIC COMPANY, ATLANTIC CITY ELECTRIC COMPANY, THE WASHINGTON WATER POWER COMPANY, PENNSYLVANIA POWER & LIGHT COMPANY AND EASTON CON-

SOLIDATED ELECTRIC COMPANY, INTERVENING DEFENDANTS; HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES; JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES; JAMES M. LANDIS, ROBERT E. HEALY, GEORGE C. MATHEWS, AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION, CROSS-DEFENDANTS

Bill of Intervention

To the Honorable Judges of the United States District Court for the Southern District of New York:

The bill of intervention of Central Arizona Light and Power Company, Indiana & Michigan Electric Company, Montana Power Gas Company, Spokane Central Heating Company, and Spokane United Railways respectfully shows to this Court and alleges:

1. Central Arizona Light and Power Company is a corporation duly organized and existing under and by virtue of the laws of the State of Arizona and is a resident and citizen of the State of Arizona, with its principal office and corporate domicile in the City of Phoenix in said State.

230

Indiana & Michigan Electric Company is a corporation duly organized and existing under and by virtue of the laws of the State of Indiana and is a resident and citizen of the State of Indiana, with its principal office and corporate domicile in the City of South Bend in said State.

Montana Power Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and is a resident and citizen of the State of New Jersey, with its corporate domicile in the City of Jersey City in said State but with its principal office and place of business in the City of Butte, in the State of Montana.

Spokane Central Heating Company is a corporation duly organized and existing under and by virtue of the laws of the State of Washington and is a resident and citizen of the State of Washington, with its principal office and corporate domicile in the City of Spokane in said State.

Spokane United Railways is a corporation duly organized and existing under and by virtue of the laws of the State of Washington and is a resident and citizen of the State of Washington, with its principal office and corporate domicile in the City of Spokane in said State.

2. On or about January 22, 1936, an order was duly made and entered by this Court granting leave to Central Arizona Light and Power Company, Indiana & Michigan Electric Company, Montana Power Gas Company, Spokane Central Heating Company, and Spokane United Railways, hereinafter sometimes referred to collectively as the "subsidiary company defendants", to intervene as addi-

tional defendants in the above entitled action, to adopt as their own the pleadings of the other defendants, and to file this bill of intervention, which is in answer to the Amended and Supplemental Bill of Complaint of the plaintiff, and by way of counterclaim and cross-bill against the plaintiff and cross-defendants named in the defendants' counterclaim and cross-bill filed herein.

3. Section 2 (a) of the Holding Company Act (hereinafter called the "Act") defines the following, among other, terms: Electric utility company, Gas utility company, Public-utility company, Holding
231 company, Subsidiary company, Holding-company system, Registered holding company, Security and Voting security. When such terms are hereinafter used, they are used in their statutory sense, as thus defined in said Section 2 (a) of said Act. When the term "Answer" is hereinafter used it refers to the answer of the original defendants and the intervening defendants, including the separate defense, counterclaim, and cross-bill filed herein.

4. Central Arizona Light and Power Company and Montana Power Gas Company are subsidiary companies of American Power & Light Company. Indiana & Michigan Electric Company is a subsidiary company of American Gas and Electric Company. Spokane Central Heating Company and Spokane United Railways are subsidiary companies of The Washington Water Power Company and thereby of American Power & Light Company. The ownership of the voting stock of the above named subsidiary companies by the above named holding companies is set forth in Paragraphs 32 and 36 of and in paragraph (q) of Exhibit I to the Answer. By reason of being subsidiary companies of the above holding companies, said subsidiary company defendants are, by definition of Section 2 (a) of the Act, subsidiary companies of Electric Bond and Share Company.

5. None of the subsidiary company defendants is a "Holding company" as defined in Section 2 (a) of the Act.

6. Central Arizona Light and Power Company is an electric utility company and a gas utility company. Indiana & Michigan Electric Company is an electric utility company. Montana Power Gas Company, Spokane Central Heating Company, and Spokane United Railways are not public utility companies as defined in said Act.

7. Central Arizona Light and Power Company has for many years conducted and still conducts an electric utility business and a gas utility business solely within the State of Arizona. Said business and the location of the utility assets used in said business are more fully described in paragraph (a) of Exhibit I to the Answer.

8. Indiana & Michigan Electric Company has for many years conducted and still conducts an electric utility business in the States of Indiana and Michigan. The Company owns certain transmission lines which cross the Indiana-Michigan boundary. Substan-
232 tial amounts of electric energy are transmitted by the Company across such state boundary and are ultimately sold to retail customers of the Company or at wholesale. The Company also

has certain transmission lines extending to the Indiana-Ohio boundary which are used for the purpose of exchanging electric energy with and receiving electric energy from an associate electric utility company having properties outside the State of Indiana. The business of said defendant and the location of its utility assets are more fully described in paragraph (c) of Exhibit V to the Answer.

9. Montana Power Gas Company has for many years conducted and still conducts a natural gas business, including an incidental business in by-products, solely within the State of Montana. The Company also purchases substantial amounts of natural gas from sources solely within the State of Montana. The business of said defendant and the location of its properties are more fully described in paragraph (f) of Exhibit I to the Answer.

10. Spokane Central Heating Company has for many years conducted and still conducts a central heating business in a portion of the business district of the City of Spokane, in the State of Washington, by means of a central steam heating plant and steam pipes and mains. All of the facilities of the Company used in the conduct of its business are located solely within the State of Washington, and steam heat is furnished solely to purchasers within said State. Said defendant is referred to in paragraph (q) of Exhibit I to the answer.

11. Spokane United Railways has for many years conducted and still conducts an electric street railway and bus service in the City of Spokane in the State of Washington. All of the facilities of the Company used in the conduct of its business are located solely within the State of Washington, and electric street railway service and bus service are rendered solely within the State of Washington. All the electricity used in the operation of the street railway properties is purchased in said State of Washington. Said defendant is referred to in paragraph (q) of Exhibit I to the Answer.

12. Upon the foregoing, each of the subsidiary company defendants alleges that it is a company engaged solely in intrastate business within the state or states in which it operates, subject to the
233 jurisdiction of such state and the regulatory authorities thereof; that it is not engaged in and its activities do not affect commerce with foreign nations or among the several states; and that it is not subject to regulation or supervision by the Federal government or any agency or instrumentality thereof, save as any of the operations of the defendant Indiana & Michigan Electric Company, as more fully described in paragraph (c) of Exhibit V to the Answer, may be held to constitute commerce between the states, which said operations are severable and distinct from the operations of said defendant within the States of Indiana and Michigan and constitute a minor and incidental part of said defendant's operations.

13. Defendants Central Arizona Light and Power Company, Indiana & Michigan Electric Company, and Spokane United Railways are subject to the regulations of, and are regulated by, the public

service commissions of the states in which they respectively operate, under and in accordance with the terms of the several public utilities acts of said states, to wit, Central Arizona Light and Power Company by the Arizona Corporation Commission, Indiana & Michigan Electric Company by the Indiana Public Service Commission and the Michigan Public Utilities Commission, and Spokane United Railways by the Washington Department of Public Service. In so far as any of the business of defendant Indiana & Michigan Electric Company may not be fully subject to regulation by the commissions of Indiana and Michigan, and may be subject to any degree of Federal regulation, such business, as hereinbefore alleged, is a minor part of, and severable and distinct from, its intrastate business.

In addition to the general power of regulation of rates and charges for, and conditions of, service and matters incidental thereto, each of the above named commissions has some of the following powers of regulation, among others, over the respective defendants subject to their jurisdiction (the states named after each power being those whose commissions have been specifically given such power): (1) investigation of management (Indiana); (2) inspection of books (Arizona, Indiana, Michigan, Washington); (3) regulation of accounts and statistics (Arizona, Indiana, Michigan, Washington); (4) regulation of depreciation or retirement account (Arizona, 234 Indiana, Washington); (5) production of books and other information and filing of reports (Arizona, Indiana, Michigan, Washington); (6) supervision of issuance of securities (Arizona, Indiana, Michigan, Washington); (7) supervision of sale, lease, transfer, mortgage, or merger of properties and franchises (Arizona, Indiana); (8) supervision of acquisition of securities or properties of another public utility (Arizona, Indiana, Washington); (9) supervision of payment of dividends (Washington); (10) supervision of budget expenditures (Washington); (11) supervision of contracts with affiliated interests for management, construction, engineering, accounting, or similar services (Indiana, Washington).

Defendant Spokane Central Heating Company and defendant Montana Power Gas Company are not now subject to similar regulation by any state agency, but are subject generally to the laws of the States of Washington and Montana, respectively.

14. By the provisions of the Act, each of the subsidiary company defendants as a subsidiary company of one or more of the holding company defendants would be and become fully subject to the jurisdiction of the Securities and Exchange Commission, its orders, rules, and regulations if this Court should order said holding company defendants to register under Section 5 of said Act. The subsidiary company defendants are advised by counsel and believe that these provisions of the Act as applied to them are wholly unconstitutional, void, and of no effect for the reasons stated in the Answer.

15. None of the subsidiary company defendants as a subsidiary company of one or more of the other defendants is entitled to apply

for exemption from the provisions of said Act and no such exemption has been granted to them or any of them by order of the Commission. Nor has any of their holding companies been granted exemption except that by Rule 3 A–2 adopted by said Commission, temporary exemption was granted to a class of companies of which defendant The Washington Water Power Company is one, and by virtue of said rule defendants Spokane Central Heating Company and Spokane United Railways are temporarily exempted from the provisions of the Act as subsidiaries of The Washington Water
235 Power Company. The exemption of defendant The Washington Water Power Company is a temporary exemption existing in the sole discretion of the Commission and defendants Spokane Central Heating Company and Spokane United Railways have no means of knowing whether said exemption will continue after February 2, 1936. Moreover, if this Court should order defendant Electric Bond and Share Company, or defendant American Power & Light Company to register under the Act, the exemption of The Washington Water Power Company, even if continued, would be of no avail to defendants Spokane Central Heating Company and Spokane United Railways since they would be and become fully subject to the jurisdiction of the Commission as subsidiary companies of defendants Electric Bond and Share Company and American Power & Light Company.

16. If the Court should order the defendants which are holding companies of the subsidiary company defendants to register under Section 5 of the Act, each of the subsidiary company defendants would be and become, as hereinabove alleged, fully subject to the jurisdiction of the Securities and Exchange Commission, its orders, rules, and regulations. Immediately upon said registration and in consequence thereof, it would be and become unlawful by the terms of the Act for any of the subsidiary company defendants, without the prior approval of the Securities and Exchange Commission, or in contravention of any rule, regulation or order from time to time by it deemed necessary or appropriate, to do any of the things enumerated in the second paragraph of Paragraph 46 of the Answer, except such things as are included within subsection (6) of said paragraph. Each of the subsidiary company defendants would likewise be subject to regulation by the Commission in respect of those matters referred to in the third and fourth paragraphs of Paragraph 46 of the Answer, which are therein stated to be applicable to subsidiary companies of registered holding companies.

If the said defendant holding companies are ordered by this Court to register under Section 5 of the Act, the subsidiary company defendants will likewise be subject to the provisions of Section 26 (b) thereof, set out in Paragraph 43 of the Answer, and that portion of the penalty provision of Section 29, likewise set out in Paragraph 43 of the Answer, which is applicable to subsidiary companies of registered holding companies.

236 17. The subsidiary company defendants adopt, upon information and belief, all the admissions, denials, and allegations contained in the Answer and make said Answer and the allegations of this bill their answer, counterclaim, and cross-bill to plaintiff's Amended and Supplemental Bill of Complaint.

Wherefore the above named subsidiary company defendants pray for the relief requested in the Answer counterclaim and cross-bill of the other defendants herein, to wit: that the Amended and Supplemental Bill of Complaint be dismissed and that said Holding Company Act be declared unconstitutional, null, and void, and that the plaintiff and the cross-defendants be restrained and enjoined from enforcing the same; and further pray that in the event that any other defendant, which is as to these subsidiary company defendants a holding company, be required to register under said Act, the rights, liabilities and duties of these subsidiary company defendants consequent upon such registration be decreed and determined.

And for such other and further relief as to the Court may seem meet.

SIMPSON THACHER & BARTLETT,
120 Broadway, New York, N. Y.,
Solicitors for Above-named Intervenors and Subsidiary Company Defendants.

THOMAS D. THACHER,
JOHN F. MACLANE,
DOUGLAS A. CALKINS,
Of Counsel.

In Supreme Court of District of Columbia

Answer to motion for inclusion of affidavit and exhibits

Filed February 26, 1936

* * * * * * *

The plaintiff, American Water Works and Electric Company, Incorporated, in response to the motion filed herein and served upon its counsel of record on February 19, 1936, requesting that the affidavit of Homer Cummings sworn to the same day, and the Exhibits annexed thereto, be included in the printed transcript of the record on the special appeal by the plaintiff from the order of
237 this Court entered on January 9, 1936, staying the proceedings in the above entitled cause, respectfully says:

1. The plaintiff is advised by its counsel that this Court is without power, at least without the consent of the plaintiff, to incorporate in the record on the plaintiff's aforesaid appeal to the United States Court of Appeals for the District of Columbia, the affidavit of the Attorney General, verified February 19, 1936, or any of the Exhibits referred to in said affidavit, or any part of said affidavit or Exhibits.

2. In addition, and as appears more particularly in paragraphs 4 and 5 hereof, the plaintiff denies that certain statements in said affidavit of Homer Cummings are in all respects true.

3. The plaintiff nevertheless is willing, if the same may lawfully be done by the order of this Court and/or by the order of said Court of Appeals and/or by stipulation of the parties, to have its said appeal heard and determined in said Court of Appeals on a record which shall include said affidavit of the Attorney General and said Exhibits, and that said affidavit and Exhibits may be considered as having been a part of the record on which the order of this Court from which the plaintiff is appealing was made and entered. Provided, however,

(a) That, for the information of the Court of Appeals, there be also incorporated in said record on appeal a copy of the aforesaid motion of the defendants of February 19, 1936, and a copy of this answer thereto, together with a copy of any order of this Court on said motion and of any stipulation between the parties which may be entered into with respect to said motion;

(b) That said affidavit of the Attorney General and said Exhibits be considered as incorporated in said record on appeal only to the extent that said affidavits and Exhibits state facts which are not denied in paragraphs 4 and 5 hereof; and

(c) That Exhibit G annexed to said affidavit of the Attorney General (the amended and supplemental bill of complaint of the Securities and Exchange Commission in the Electric Bond and Share case) be considered on said appeal merely as a bill of complaint alleging facts which the plaintiffs therein believe to be true and which therefore they would be willing to verify if verification of such bill were necessary.

238 (d) That nothing in this answer contained be taken or construed as an admission by the plaintiff that any of the statements concerning it contained in the quotations from the so-called Splawn Report set forth in paragraph 11 of the said affidavit of the Attorney General were true of the plaintiff at the time when its bill of complaint herein was filed or are now true.

(e) That the defendants consent that there also be incorporated in the record on appeal the following additional facts, hereby alleged by the plaintiff, with respect to the cases referred to in paragraph 9 of the Attorney General's said affidavit—namely, that the bills of complaint in said cases have been or shortly will be dismissed as against the defendants therein who are also defendants in this suit, or that the service of process against said defendants has been or shortly will be quashed; that the remaining defendants in said cases, namely, the local district attorneys (and in some cases also the local post masters and other local officials) have defaulted or will default by failing to answer or otherwise move with respect to the bills of complaint therein, with the result that orders in said cases have been or shortly will be entered that said bills of complaint be taken pro confesso as against said local defendants; that therefore none or practically none

of said cases will be heard or determined on the merits; that the aforesaid dismissals, or (as the case may be) the aforesaid quashing of the service of the process, in said cases as against said defendants in said cases who are also defendants herein were made on their own motions, on the ground of the improper venue of said suits as against them, or (as the case may be) on the ground that the service of process on said defendants (which in all cases was outside of the district in which the suit was pending) was null and void; and that the aforesaid action of said local defendants in all said cases in suffering said bills of complaint to be taken pro confesso as against them was taken under the advice or instructions of one or more of the defendants herein.

4. With respect to the allegation in said affidavit of Homer Cummings that:

"All of the facts set forth in this affidavit with the exception of Exhibit J described in paragraph 15 were called to the attention of the Court and of opposing counsel in the briefs and oral arguments heretofore submitted on behalf of the defendants in the above entitled causes."

239

plaintiff denies that said allegation is correct if it is intended to be broad enough to include any one of the following specific allegations of fact:

(a) An allegation that Exhibit B, annexed to said affidavit, purporting to be a true and correct copy of a supplemental bill of complaint in the suit filed by the Securities and Exchange Commission against the Electric Bond & Share Company and certain of its corporate subsidiaries, was called to the attention of the Court and of opposing counsel in the briefs and oral arguments submitted on behalf of the defendants. The only way in which said supplemental bill of complaint was called to the attention of the Court and opposing counsel was by the bare statement of the defendants in their reply brief filed after the argument that the Government "has filed an amended supplemental bill" in that suit.

(b) An allegation that Exhibit H, annexed to said affidavit—purporting to be a schedule setting forth the names of the plaintiffs in each of the forty-nine proceedings alleged to have been pending on December 12, 1935, in the District Court of the United States for thirteen districts seeking an adjudication of the constitutionality of the Public Utility Holding Company Act of 1935, the Court in which each such proceeding is pending, and the date upon which the bill of complaint therein was filed—was called to the attention of the Court and of opposing counsel in the briefs and oral arguments submitted on behalf of the defendants.

5. With respect to the other allegations in said affidavit plaintiff denies that said affidavit is correct in the following particulars:

(a) It is incorrect if it is intended to assert that any of the statements quoted in it on pages 3 and 4 from the so-called Splawn Report contradict or are inconsistent with any of the allegations of the plaintiffs' bill of complaint. In so far as said affidavit is intended to

allege that any of said quoted statements are both true and in contradiction of or inconsistent with any of the allegations of said bill of complaint, said affidavit is incorrect.

(b) It is incorrect if the allegations contained in it that
240 "the Electric Bond and Share Company * * * comes in contact with the Act at more points than any other holding company system" is intended as meaning more than that Electric Bond and Share Corporation may be or may have been engaged in some activities not engaged in by the plaintiff, which activities, under the terms of the Act, either are unlawful for a non-registered holding company or would be unlawful for a registered holding company without compliance with the provisions of the Act.

6. Except, therefore, to the extent stated in this answer the plaintiff opposes said motion of the defendants herein for the reasons hereinabove stated.

JOHN C. HIGGINS,
48 Wall Street, New York, N. Y.,
JOHN S. FLANNERY,
Hibbs Building, Washington, D. C.,
Attorneys for Plaintiff.

SULLIVAN & CROMWELL,
48 Wall Street, New York, N. Y.,
Of Counsel.

[*Duly sworn to by Earle S. Thompson; jurat omitted in printing.*]

241 Kings Co. Clerk's No. 180, Register's No. 7750.
Queens Co. Clerk's No. 2043, Register's No. 7586.
Commission expires March 30th, 1937.

In Supreme Court of District of Columbia

In Equity. No. 60146

[Title omitted.]

Stipulation re amendment of answer

Filed February 26, 1936

It is hereby stipulated and agreed by and between the parties hereto that paragraph 3 (e) and paragraph 4 (a) of Plaintiffs' answers, filed February 26, 1936, to motion of defendants, filed herein February 18, 1936, be amended to read as follows:

3 (e). That the defendants consent that there also be incorporated in the record on appeal the following additional facts, hereby alleged by the plaintiff, with respect to the cases referred to in paragraph 9 of the Attorney General's said affidavit—namely, that the bills of complaint in some of said cases have been dismissed as against the defendants therein who are also defendants in this suit, or that the service of process therein against said defendants has been quashed; that the remaining defendants in some of said cases,

namely, the local district attorneys (and in some cases also the local post masters and other local officials) have defaulted by failing to answer or otherwise move with respect to the bills of complaint therein, with the result that orders in some of said cases have been entered that said bills of complaint be taken pro confesso as against said local defendants; that in all or virtually all of the remainder of said cases the defendants herein who are also named as defendants in said cases have moved that the bills of complaint be dismissed as against them, or that service of process against them be quashed; that the aforesaid dismissals or motions for dis-
242 missals, or (as the case may be) the aforesaid quashing of the service of the process or motions for quashing of service of the process, in said cases as against said defendants in said cases who are also defendants herein were made on their own motions, on the ground of the improper venue of said suits as against them, or (as the case may be) on the ground that the service of process on said defendants (which in all cases was outside of the district in which the suit was pending) was null and void; and that the aforesaid action of said local defendants in the several cases in which said bills of complaint have been suffered to be taken pro confesso as against them was taken under the advice or instructions of one or more of the defendants herein.

4 (a). An allegation that Exhibit B, annexed to said affidavit, purporting to be a true and correct copy of a supplemental bill of complaint in the suit filed by the Securities and Exchange Commission against the Electric Bond & Share Company and certain of its corporate subsidiaries, was called to the attention of the Court and of opposing counsel in the briefs and oral arguments submitted on behalf of the defendants. However, a copy of said amended and supplemental bill was transmitted to the Court by defendants' counsel under cover of their letter of December 24, 1935, copy of said letter being transmitted at the same time to counsel for plaintiff.

With the foregoing amendments, the parties hereto agree that the defendants' motion, the affidavit of Homer Cummings and exhibits therewith, the plaintiff's answer to said motion and this stipulation and the order of the Court this day entered shall be filed and made a part of the transcript of record to be transmitted to the Court of Appeals, subject to the qualifications contained in plaintiff's said answer, as amended by this stipulation.

JOHN S. FLANNERY,
JOHN C. HIGGINS,
J. C. B.,
Attorneys for Plaintiff.
HOMER S. CUMMINGS,
R. H. J.,
JOHN J. BURNS,
R. H. J.,
Attorneys for Defendants.

FEBRUARY 26, 1936.

243 In Supreme Court of District of Columbia

Order as to motion, affidavit, etc.

Filed February 26, 1936

* * * * * * *

This cause came on for further hearing on the 26th day of February 1936, on motion of defendants to perfect the record in this cause by incorporating therein an affidavit of Homer Cummings and appended exhibits, and upon consideration of said motion, the answer of the plaintiff thereto, and the stipulation of the parties, it is, this 26th day of February 1936.

Ordered, that the said motion, affidavit, and exhibits, the answer of the plaintiff thereto, and the stipulation of the parties and this order be filed as part of the transcript of record in this cause.

JENNINGS BAILEY, *Justice.*

In Supreme Court of District of Columbia

Assignment of errors

Filed February 20, 1936

* * * * * * *

Comes now the plaintiff, the American Water Works and Electric Company, Incorporated, by its attorneys, and states that this Court (Bailey, J.) by order entered January 9, 1936, erred as follows:

1. In granting the motion of the defendants to stay the proceedings herein.

2. In entering the order of January 9, 1936, staying the proceedings in this cause to await the outcome of another proceeding in the courts of a foreign jurisdiction, between other parties and involving different issues, which this Court has no power to control.

3. Because said order is in effect an injunction against the assertion of plaintiff's rights during the period specified and denies to plaintiff its statutory and constitutional right to have the questions of fact and law raised in its bill of complaint speedily determined and conclusively adjudicated by the Courts of this jurisdiction.

4. Because said order will cause plaintiff irreparable injury,
244 impair its freedom of contract, and deprive it of the right to the enjoyment and use of its property without any pecuniary redress.

5. Because the Court had no power or jurisdiction to enter said order.

6. Because said order constitutes an abuse of any discretion which the Court may have had in the premises and is arbitrary and capricious.

7. Because said order is not supported by any facts properly before the Court.

8. Because the Court made no findings of fact and separate conclusions of law as required by equity rule No. 70½ of the Supreme Court of the United States, promulgated November 25, 1935.

JOHN C. HIGGINS,
JOHN S. FLANNERY,
Attorneys for plaintiff, American Water Works and Electric Company, Incorporated.

Service of a copy of the foregoing assignment of errors is acknowledged this 20th day of February, 1936.

HOMER CUMMINGS,
Atty. Gen.,
By UGO CARUSI,
Executive Asst.,
JOHN J. BURNS,
Attorneys for Defendants.

In Supreme Court of District of Columbia

Designation of record

Filed February 20, 1936

* * * * * * *

Now comes the American Water Works and Electric Company, Incorporated, the plaintiff in the above entitled cause, by its attorneys of record, and designates the following for inclusion in the transcript of record on appeal in the above entitled cause:

1. Bill of Complaint;
2. Motion of Defendants to Stay Proceedings;
3. Answer of Plaintiff to Defendants' Motion for a Stay, and Exhibit;

245 4. Memorandum of Bailey, J., filed January 6th, 1936, sustaining Motion to Stay.

5. Order of Bailey, J., entered January 9th, 1936, staying further proceedings.

6. Order of the United States Court of Appeals for the District of Columbia, dated February 17th, 1936, granting Petition for Allowance of a Special Appeal.

7. Plaintiff's Assignment of Errors.

8. This Designation of Record.

JOHN C. HIGGINS,
JOHN S. FLANNERY,
Attorneys for Plaintiff, Appellant.

Service of a copy of the foregoing Designation of Record is acknowledged this 20 day of February, 1936.

HOMER CUMMINGS,
Atty. Gen.,
By UGO CARUSI,
Executive Asst.,
JOHN J. BURNS,
Attorneys for Defendants.

[Clerk's Certificate to foregoing transcript omitted in printing.]

246 In United States Court of Appeals for District of Columbia

January Term, 1936

No. 6655

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INC., APPELLANT

v.

JAMES M. LANDIS ET AL., APPELLEES

Stipulation as to transcript of record—filed March 2, 1936

It is stipulated by counsel for the respective parties in the above entitled cause that in printing the record, the Clerk shall omit therefrom Exhibit A, pages 36 to 55, inclusive, of the typewritten record, said Exhibit being a copy of the original bill of complaint in the case of Securities and Exchange Commission v. Electric Bond and Share, et al., as said original bill of complaint is superseded by the amended and supplemental bill of complaint in said latter case which is included in the typewritten record at pages 80 to 116.

JOHN S. FLANNERY,
JOHN E. LARSON,
Attorneys for Appellant.
HOMER S. CUMMINGS,
B. V. C.,
JOHN J. BURNS,
B. V. C.,
Attorneys for Appellees.

247 [File endorsements omitted.]

249 United States Court of Appeals for the District of Columbia

Original No.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, PETITIONER

vs.

JAMES M. LANDIS, GEORGE C. MATHEWS, ROBERT E. HEALY AND JAMES D. ROSS, INDIVIDUALLY AND AS MEMBERS OF AND CONSTITUTING THE SECURITIES AND EXCHANGE COMMISSION OF THE UNITED STATES, HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES AND JAMES A. FARLEY, INDIVIDUALLY AND AS POSTMASTER GENERAL OF THE UNITED STATES, RESPONDENTS

Petition for allowance of special appeal

To the Honorable Chief Justice and the Associate Justices of the United States Court of Appeals for the District of Columbia:

Comes now your petitioner and prays for the allowance of a special appeal from an order of the Supreme Court of the
250 District of Columbia entered therein on the ninth day of January 1936, by Mr. Justice Bailey in the case of American Water Works and Electric Company, Incorporated, Plaintiff v. James M. Landis, et al., Defendants, Equity No. 60146, and for reasons in support thereof, respectfully shows unto this Court:

I

Said order is an order staying all proceedings in petitioner's said suit "until the validity of" the Public Utility Holding Company Act of 1935 "has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission v. Electric Bond and Share Company, et al., now pending in the District Court of the United States for the Southern District of New York, or until that case is otherwise terminated."

II

Because of the facts hereinafter alleged, said stay of petitioner's said suit in the court below is now causing petitioner irreparable damages, which damages will continue to increase unless and until said stay is vacated. Said stay is a grave abuse of any power of discretion which the court below may have had in the premises. It operates practically as an injunction against the assertion of peti-

tioner's rights during the period specified, and denies to peti-
251 tioner its constitutional right to a reasonably prompt trial of the issues involved in its said suit, impairs its freedom of contract and deprives it of the right to the enjoyment and use of its property. Petitioner therefore alleges that the granting of the appeal for which it petitions is necessary in the interest of justice.

III

The facts with respect to petitioner's said suit and said suit in favor of which petitioner's suit is stayed, and with respect to said stay are as follows:

1. Petitioner is a Delaware corporation.

2. It is a "holding company" within the definition of that term contained in Title I of the Act of Congress, approved August 26, 1935, entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes" (Pub. No. 333, 74th Cong. 1st Sess.) (hereinafter called "the Act").

3. Under the provisions of Section 4(b) of the Act, petitioner is required on or before December 1, 1935, to register with the Securities and Exchange Commission (hereinafter called "the Commission"), created by an Act of Congress, approved June 6, 1934, known as "the Securities Exchange Act of 1934" (48 Stat. 881).

252 4. Petitioner has not registered under the Act and does not intend to do so, having been advised by counsel that the Act, as to petitioner, is unconstitutional in its entirety. It has alleged in its bill of complaint in the court below, and hereby realleges, that the inevitable and irreparable damages which it will suffer from registering will be at least as great as those which it will suffer from not registering, and it is advised by counsel (as is also alleged in said bill) that its right to challenge the constitutionality of the Act may be prejudiced by registering under it.

5. On November 27, 1935, it filed its bill in equity in the court below, naming as defendants the respondents herein (hereinafter called the "defendants"),—namely, the four members of the Commission, the Attorney General and the Postmaster General of the United States.

6. The defendants were served with process on the same day, and thereafter appear in the court below and moved for the stay, as is hereinafter in paragraph 17 alleged.

7. The Commission is specifically charged by the Act with the enforcement and administration of its provisions. The Attorney General is specifically empowered by Section 18 of the Act to enforce its criminal provisions. Many of the provisions of the
253 Act prohibit the use of the mails for certain specified purposes by both unregistered and registered holding companies. It is the duty of the Postmaster General, as prescribed by law, to enforce said last named provisions of the Act.

8. Petitioner's bill alleges the unconstitutionality of the Act as a whole as against petitioner, and seeks a permanent decree restraining the defendants from seeking to enforce its provisions against petitioner.

9. Petitioner's bill invokes the equitable jurisdiction of the court to enjoin the enforcement of the Act as unconstitutional, under principles established in the leading cases of Ex Parte Young, 209 U. S. 123; Pierce v. Society of Sisters, 268 U. S. 510; Euclid v. Ambler Realty Co., 272 U. S. 365; and Terrace v. Thompson, 263 U. S. 197.

10. The bill alleges both (a) threats to enforce the Act against petitioner (paragraphs 44 and 50),[1] and (b) with great circumstantiality (paragraphs 34–53, inclusive, particularly 34–46 and 53) exactly how the provisions of the Act (which are alleged with the same circumstantiality) are now causing petitioner irreparable dam-
254 ages, and why these damages will continue to increase until petitioner obtains a final decree granting the prayers of the bill. The bill shows that these damages result from the practically complete paralysis of petitioner's normal and necessary business activities caused by the cloud which the provisions of the Act and the activities of the defendants thereunder cast on the validity of all of petitioner's business and transactions, including its contracts and the continued holding and voting of the stock of its subsidiary corporations.

11. On November 26, 1935, the Commission filed its bill in equity in the United States District Court for the Southern District of New York against Electric Bond and Share Company (hereinafter called "Electric Bond") and five of its corporate subsidiaries.

12. The defendants in said Electric Bond suit are alleged to be holding companies within the definition of the Act and to be required to register with the Commission on or before December 1, 1935, as aforesaid.

13. The bill in said suit asks only that the defendants be required by mandamus to register under Section 4 (b) of the Act and that they be enjoined from violating the provisions of Section 4 (a) thereof.

14. Within approximately four days thereafter, six other
255 corporations, which are also holding companies within the definition of the Act, filed their bills in equity in the court below against the defendants.

15. These bills seek, on substantially the same grounds, the same relief sought by petitioner in its bill, except that some of them also seek relief under Section 274(d) of the Judicial Code, as amended by the Act of June 14, 1934 (Chapter 512, 48 Stats. 955, Title 28 U. S. C. A. § 400) (hereinafter called "the Declaratory Judgment Act").

16. The same or similar relief has been sought in different United States District Courts by a large number of other corporations which

[1] Petitioner will submit a copy of the bill to the court should it care to examine the same in connection with this petition.

are also holding companies within the definition of the Act. On information and belief, these bills name as parties defendant the United States District Attorneys in the respective districts and the local Postmasters, and some of them name other defendants, including the defendants named in petitioner's bill.

17. On December 7, 1935, the defendants made their aforesaid motion for a stay of all further proceedings in petitioner's suit and also in the other above mentioned suits in the court below, until the final determination, by decision of the Supreme Court of
256 the United States, or otherwise, of the aforesaid suit of the Commission against Electric Bond in New York.

18. The motion was signed by the Attorney General of the United States and by the general counsel for the Commission, without supporting affidavits.

19. The motion did not allege, and there has been no later attempt by the defendants to show,

(a) How soon the Electric Bond case would probably be at issue on bill and answer or otherwise. (In this connection petitioner also alleges that since said motion was made and on or about December 21, 1935, an amended bill has been filed in said case, and that as yet none of the defendants have answered it.); or

(b) How soon the Electric Bond case would probably be reached for hearings on bill and answer or otherwise; or

(c) That the Electric Bond case would probably be reached for hearing before petitioner's case or before any of the other cases in the court below; or

(d) How soon a final determination of the Electric Bond case may reasonably be expected.

20. In their briefs and arguments on this motion the defendants asserted that the taking of testimony in the Electric Bond case on the hearings on the bill and answer would require at least six months.

257 21. The only reasons for the stay alleged in said motion were

(a) The pendency of the suits hereinabove mentioned in the court below and in other courts to enjoin the enforcement of the Act;

(b) That the Government "is anxious to secure an early determination of" the constitutionality of the Act; that to that end the Commission has instituted the above mentioned suit against Electric Bond; that this suit "will be prosecuted with all due diligence to secure from the Supreme Court" a decision as to "the validity of the essential features of the Act"; and

(c) A statement that "no public interest will be served by pressing for a decision of this issue in a multitude of suits", but that this "will tend to clog the courts, overtax the facilities of the Government, and make against that orderly and economical disposition of the controversy which is the Government's aim."

22. At no stage of the proceedings on the motion have the defendants attempted to show that the issues in the Electric Bond case

are identical with the issues in petitioner's suit, or with the issues in any of the other suits attempted to be stayed. The most that the defendants have asserted in this connection is that the decision
258 in the Electric Bond case would "simplify the issues" and furnish a "valuable precedent" in the suits to be stayed.

23. On the contrary, petitioner has shown that the allegations of the Commission's own bill in the Electric Bond case show that that company differs essentially from petitioner, and in particular that the bill in that case relies specifically, in support of the constitutionality of the Act as against Electric Bond, on alleged activities of that company which petitioner's bill expressly denies this petitioner engages in. If, as the allegations in the bill against Electric Bond seem to indicate, proof that Electric Bond is engaged in such activities is essential to establish the constitutionality of the Act as against Electric Bond, the Act is presumably unconstitutional as against petitioner.

24. Petitioner has also shown, and the defendants do not deny, that it is possible that the Electric Bond case will be held to involve only the question of the constitutionality of Section 4 of the Act, requiring certain holding companies to register and making illegal certain specified acts by unregistered holding companies.

25. The defendants have not attempted to deny that the question of the constitutionality of the Act may well be held to be in-
259 volved in a much broader and more comprehensive way under the issues presented by petitioner's bill than under those presented by the bill in the Electric Bond case.

26. On the argument of the motion counsel for petitioner, speaking on behalf of petitioner and of all the other complainants in the court below, made to the defendants the following proposal:

"If counsel for the Government really want in these cases to avoid a multiplicity of trials and suits and proceedings and if they will meet any of our overtures half way, I undertake to say that it will not be difficult for us to agree upon a group of three or four cases which will present every question that is involved in this multitude of suits, so that every one of these companies may be satisfied that its rights will be promptly determined—consolidate them all in one case, in one court, and try them out—so that the Government need not multiply its staff and need not exhaust its budget; and if it can go ahead, if it wants to go ahead, to a fair determination of those issues in one case, in one court, we will know then, in a year's time, perhaps, just what the fate of all these companies is to be."

The Attorney General in open court declined unconditionally even to consider this offer.

27. In their briefs on the motion and in their oral argument the defendants offered to consent to a temporary injunction against
260 them in the suits sought to be stayed, said injunctions to remain in effect pending the final decision in the Electric Bond case. The allegations of paragraph 10 of this petition show why such a temporary injunction would not prevent the damages which

petitioner is suffering and will continue to suffer until the Act is declared unconstitutional as to it, and until the defendants are permanently restrained from enforcing the Act against it, and why therefore petitioner could not accept said offer and has not prayed for a temporary injunction in its bill.

28. In their briefs on the motion the defendants have urged, as additional reasons for the requested stay against petitioner, that petitioner's bill does not state a cause of action entitling it to equitable relief. The defendants, however, have made no motion to dismiss petitioner's bill on this or any other grounds.

29. In their oral arguments and briefs on the motion the defendants threatened that if the requested stays were not granted they might not defend petitioner's suit or the other suits in the court below, but might suffer decrees to be taken against them, and that
261 in such event they might not appeal from such decrees; and they further asserted or intimated that, if this were done and if subsequently the Act should be held constitutional in the Electric Bond case, such a decision would make it impossible thereafter to enforce the decrees against them in petitioner's suit and the other suits in the court below.

30. In their briefs and arguments on the motion the defendants referred to

(a) Announcements made by the Commission to the effect that holding companies which registered under the Act might do so without prejudice to their rights thereafter in any way to challenge its constitutionality. (For the reasons hereinabove in paragraph 4 stated, petitioner has refused to register under the Act, despite the aforesaid announcement of the Commission.); and

(b) An announcement by the Attorney General that he does not at present intend to prosecute non-registering holding companies for penalties imposed on such companies by Section 29 of the Act until after a final judicial adjudication with respect to the validity of the Act, and to his "suggestion" to the same effect in a circular letter to the Federal District Attorneys; and

(c) Instructions issued by the Postmaster General to postmasters not for the present to refuse the use of the mails to non-registering holding companies.

262 31. On the facts hereinabove in paragraphs 1 to 30, inclusive, alleged, the court below granted the stay requested by the defendants.

32. With respect to the suits, hereinabove in paragraph 16 referred to, commenced in various of the District Courts of the United States, the opinion of the court below in granting the requested stay states:

"Counsel seem to agree that these latter cases are defective for want of jurisdiction, and that it is likely that if dismissed in the Courts where they are now pending, they will be filed in this Court."

33. Petitioner is advised by its counsel and therefore alleges that counsel for this petitioner has never conceded and does not believe that said cases in other Federal courts are defective or will probably be dismissed for want of jurisdiction. The claim of jurisdictional defects in said cases is solely that of counsel for the defendants, and the learned court was therefore mistaken in said statement quoted in paragraph 32 above.

IV

Petitioner respectfully submits the following reasons for asking this Court to grant its petition for said special appeal and for holding that the stay of proceedings granted by the court below
263 constitutes a gross abuse of any discretion which it may have had in the premises.

1. Even a mere stay of legal proceedings already commenced may constitute an unlawful infringement of constitutional rights. Sliosberg v. New York Life Insurance Co., 244 N. Y. 482.

2. A stay granted to A in an action or suit against him by B until the final decision of a proceeding brought by the applicant, A, against another party in another jurisdiction is a remedy of an extraordinary nature, which should be granted, if at all, only in the most unusual and compelling circumstances, even when the issues in the two proceedings are identical. Such a stay enables a party to a controversy between himself and different separate parties, involving the same question or issue, to select not only the adversary party with whom such issue is first to be tried to final judgment, but also the court in which it is to be tried, and possibly also the judge who will try it, and no court should confer such a favor on any litigant. In a matter of this sort, the discretion of a court of equity can be no wider than that of a court of law.

3. Where, as in the case at bar, the issues are not identical, to grant a blanket in-limine stay is a flagrant abuse of any discretion which a court may have in such matters, and a violation of constitu-
264 tional rights, where, as also in the case at bar, there are present the following additional facts:

(a) The applicant for the stay has made no attempt to show that the proceeding which he seeks to prefer, will, in the usual and probable course of events, be promptly tried and tried before the proceedings which he asks to have stayed;

(b) The stayed suits are a number of substantially identical suits against the applicant for the stay in the court of his own domicile;

(c) The preferred suit is a single suit in another jurisdiction, which the court that grants the stay cannot control;

(d) The issues in the suits to be stayed will probably be broader and more comprehensive than those in the preferred suit;

(e) The parties stayed will suffer irreparable injury during the stay and because of the stay, against which injury there is no indemnity by bond, or otherwise; and

(f) The applicant for the stay has refused even to consider an offer made by the parties stayed to stipulate with him that only a few of the entire number of suits, to be selected by agreement between the adversary parties, shall be tried (and, if the applicant wishes, tried together in one consolidated case), as test suits of the issues involved in them.

4. None of the following additional facts, relied upon by the defendants, justifies the stay which has been granted here:

265 (a) The fact that other similar suits are pending in other jurisdictions, which suits may later be dismissed or withdrawn, and might thereafter be recommenced in the court below. That bridge should not be crossed until it is reached.

(b) The defendants' contention that the pending bills in the court below, or any of them, are insufficient in law—either because the bills show no ground for equitable relief against the enforcement of the Act or because they do not state a cause of action under the Declaratory Judgment Act. If either of these contentions is sound, the defendants have their remedy by motions to dismiss.

(c) The statements of the defendants that, if the requested stay is not granted, they may suffer decrees to be taken against them in these suits and not appeal such decrees, and that, if they do this, and if the Act is thereafter held to be constitutional in the Electric Bond case under a decision which would also be applicable to the plaintiffs in these suits, the decrees against the defendants in these suits could not thereafter be enforced against them. If this latter contention is sound, the defendants obviously need no stay in these actions. If it is not sound, the defendants are in the remarkable position of supporting a request to stay a suit rightfully commenced against them by a threat not to defend it if the stay is not granted.

5. Any relief that the defendants may hereafter be able to show themselves entitled to by way of reasonable extension of their

266 time to answer, or by way of any ordinary postponement of hearings on the bills and answers, or consolidation of causes presenting the same issues, may be granted them when the actual necessity therefor arises.

6. But no litigant is entitled to a stay order which permits him, as one party in a series of lawsuits with many other litigants, to select the adversary, the issues, the state of facts and the court which he prefers for the litigation, in order that he may, as defendants argued in the lower court, prosecute that one case through the trial and appellate courts to a final decision which will serve as a "valuable precedent" on some of the issues which will ultimately have to be tried in the cases that are stayed. And that is especially true where, as here, the plaintiffs in the cases that are stayed are daily suffering great and irreparable and increasing damages which will continue all through the long period of the stay, and through the additional long period that must subsequently elapse before their own cases can be tried and finally decided on appeal.

7. In these circumstances we respectfully submit that the issuance of the stay order in this case constitutes a grave abuse of discretion. No precedent justifying such an extraordinary proceeding was presented to the court below, and counsel for petitioner are prepared to show to this Honorable Court, upon the hearing of an appeal where the authorities may properly be cited and reviewed, that no precedent for such a stay exists.

267 Wherefore, the premises considered, petitioner prays for an allowance of a special appeal from the order of Mr. Justice Bailey entered herein on the ninth day of January 1936, and for such other and further relief as to this Honorable Court may seem proper and just.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED,
By E. S. THOMPSON,
Its Executive Vice-President,
Petitioner.

JOHN C. HIGGINS,
48 Wall Street, New York, N. Y.,
JOHN S. FLANNERY,
Hibbs Building, Washington, D. C.,
JOSEPH P. TUMULTY,
1317 F Street, N. W., Washington, D. C.,
Attorneys for Petitioner.

SULLIVAN & CROMWELL,
48 Wall Street, New York, N. Y.
McKENNEY, FLANNERY & CRAIGHILL,
Hibbs Building, Washington, D. C.,
Of Counsel.

268 UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, County of New York, ss:

EARLE S. THOMPSON, being first duly sworn, says: That he is the Executive Vice-President of American Water Works and Electric Company, Incorporated, the petitioner in the foregoing petition; that he is duly authorized to make oath to the same; that he has read the foregoing petition and knows the contents thereof and that he verily believes the facts stated therein to be true.

EARLE S. THOMPSON.

Sworn to before me this 15th day of January 1936.
[SEAL] WILLIAM N. SCHLEICHER,
Notary Public.

Bronx Co. Clk's No. 217, Reg. No. 7–S–37. N. Y. Co. Clk's No. 153, Reg. No. 7–S–95. Kings Co. Clk's No. 22, Reg. No. 7079. Queens Co. Clk's No. 1214, Reg. No. 5010. Commission Expires March 30, 1937.

81329—36——2

269 United States Court of Appeals for the District of Columbia

Original No. 2560

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, PETITIONER

vs.

JAMES M. LANDIS ET AL., RESPONDENTS

Objections to allowance of special appeal

To the Honorable Chief Justice and the Associate Justices of the United States Court of Appeals for the District of Columbia:

Now come the Respondents and pray that the Petition for allowance of a special appeal from an order of the Supreme Court of the District of Columbia entered therein on the ninth day of January 1936, by Mr. Justice Bailey in the case of American Water Works and Electric Company, Incorporated, Plaintiff, v. James M. Landis, et al., Defendants, Equity No. 60146, be dismissed.

Answer to allegations of petition

(The numbering of Articles, paragraphs, and sub-paragraphs corresponds with the numbering in the Petition.)

I

Said Order is not, as in effect alleged, an unqualified "order staying all proceedings in Petitioner's suit 'until the validity of' the Public Utility Holding Company Act of 1935 'has been determined by the Supreme Court of the United States in the case of Securities and Exchange Commission v. Electric Bond and Share Company, et al., now pending in the District Court of the United States for
270 the Southern District of New York, or until that case is otherwise terminated.'" The proceedings were stayed only upon the terms and conditions set forth in the opinion of the Supreme Court of the District of Columbia in this cause filed on the sixth day of January 1936, and appended to Respondents' Objections to the Petition of The North American Company, Original No. 2559. The stay is, by the opinion, expressly "conditioned upon a diligent and active prosecution of the Electric Bond and Share case." Under the terms of the stay and during the period covered thereby, as the opinion clearly states, the Petitioner has a right to an injunction against the Respondents if and whenever Petitioner deems it necessary to avail itself of that right. The trial court found that such interlocutory relief would give the Petitioner "all the protection needed pending a decision by the Supreme Court" in the Bond and Share case "and save great amount of labor, time, and expense."

The stay granted is interlocutory and remains completely within the control of the trial court to revise or vacate in the event of any possible unanticipated hardship or for any other good cause shown.

II

The Respondents deny that the stay of Petitioner's suit in the court below is now causing Petitioner irreparable damages or that such alleged damages will continue to increase unless and until said stay is vacated. To the contrary the stay was sought and granted not because of any statutory or technical rule binding upon the court but as a matter of discretion to maintain the orderly course of justice—grounds requiring the court to be satisfied that the stay did not prejudice any legitimate interest of the petitioner. And the court expressly found: "The plaintiffs seek an early decision by the Supreme Court but they could not appeal from a decree of this Court in their favor, and as said before, I cannot see how their real interests will not be protected by the temporary injunction to which the defendants offer to submit."

The Respondents deny that the stay was a grave abuse of discretion which the court below undoubtedly had in the premises. To the contrary the Respondents assert that the stay was necessary to maintain the orderly course of justice and prevent a grave abuse by the Petitioner of the judicial process of the court below.

271 The Respondents deny that the stay operates practically as an injunction against the assertion of Petitioner's rights during the period specified or that the stay denies to the Petitioner any constitutional, legal, or other right of which a court of equity may properly take cognizance, or that the granting of the appeal is necessary or even compatible with the interest of justice. The stay in no sense operates as an injunction against the Petitioner; it controls only the progress of this particular cause so as to maintain the orderly course of justice. The Petitioner, by electing to bring this Petition for the allowance of a special appeal, has recognized that the order of stay is not in the nature of an injunction from which an ordinary appeal may be taken. If, as counsel for the Petitioner allege in paragraph 33 of Article III of its Petition, the cases in other districts brought by one of the subsidiary holding companies of the Petitioner and numerous other holding companies in other districts are not jurisdictionally defective, then the Petitioner itself is free to assert any and all its rights in other districts, including its domiciliary district. The Petitioner is neither resident nor doing business in the District of Columbia.

III

The Respondents deny that all of the facts relating to the granting of the stay by the court below are fully and accurately set forth in Article III of the Petitioner's Petition. For purposes of this Answer, the Respondents do not deny the allegations of paragraphs 1,

2, 3, 5, 6, 8, 11, 12, 13, 14, 15, 16, and 17 of Article III, but they do deny certain allegations of the remaining paragraphs, as will hereinafter more particularly appear.

4. Respondents admit that the Petitioner alleges the unconstitutionality of the Act as an excuse for its failure to register. Respondents deny that Petitioner will suffer any inevitable and irreparable damage from registering or not registering under the Act. The inconvenient position of a non-registered company has been deliberately chosen by the Petitioner as an alternative to filing a simple notification of registration—all that is presently required of registered companies. Respondents deny that Petitioner's right later to challenge the constitutionality of the Act could possibly be prejudiced by presently filing such notification. Respondents assert that such a contention is frivolous and without color of merit; all four judges who have considered the contention that registration waives or impairs any constitutional right have rejected it: Judge Way in Public Utility Investing Corporation v. Utilities Power & Light Corporation, U. S. District Court, E. D. Va., December 17, 1935; Judge Holly in Matter of Public Utilities Securities Corporation, U. S. District Court, N. D. Ill., November 27, 1935; Judge Coleman, in Matter of American States Public Service Company, U. S. District Court, D. Md., November 7, 1935; and Mr. Justice Bailey in the opinion filed January 6, 1935, in the proceedings below.

272

7. The Respondents deny that the Attorney General is specifically empowered by Section 18 of the Act to enforce its criminal provisions before evidence of violation is transmitted to him by the Securities and Exchange Commission. The Respondents further deny that it is the duty of the Postmaster General, as prescribed by law, to enforce the provisions of the Holding Company Act.

9. The Respondents admit Petitioner's bill invokes the equitable jurisdiction of the court to enjoin the enforcement of the Act as unconstitutional. But the Respondents deny that the bill is sustainable under the principles established by Ex Parte Young, 209 U. S. 123; Pierce v. Society of Sisters, 268 U. S. 510; Euclid v. Ambler Realty Co., 272 U. S. 365; and Terrace v. Thompson, 263 U. S. 197, in each of which specific threats of enforcement were alleged and admitted. Where there are no specific threats, a court of equity has no jurisdiction to give an injunction, Ex Parte La Prade, 289 U. S. 444; Spielman Motor Co. v. Dodge, 295 U. S. 89; and, as the trial court pointed out, under such circumstances, there is no case or controversy against any defendant which warrants the giving of a declaratory judgment. Liberty Warehouse Co. v. Grannis, 273 U. S. 70.

The Respondents aver that whether the Petitioner's bill is ultimately determined to be with or without equity is irrelevant to the granting or denying of the stay. The Respondents did not move to dismiss Petitioner's bill. As the Attorney General stated below (Reply Brief In Support of Motion to Stay Proceedings, 29–30):

"The Government does not feel that for the purposes of this proceeding it must demonstrate beyond doubt that this Court is without equitable jurisdiction to try the plaintiffs' bills. The Government has already brought a test suit without jurisdictional difficulties as a vehicle to take the question of the constitutionality of the Act to the Supreme Court—the only purpose for which the plaintiffs want a final decision of this Court. The Government feels, therefore, that it needs only to indicate to this Court that there is
273 sufficient doubt about the Court's equity jurisdiction so that its questionable character can be settled finally only by the United States Supreme Court, and that there is a real possibility that if the Court proceeded to a long and expensive trial on any of these bills the case might ultimately be dismissed by the United States Supreme Court upon jurisdictional grounds without any adjudication upon the substantive issues of constitutionality."

10. The Respondents deny each and every allegation of Paragraph 10 of the Petition. To the contrary the Respondents aver that the Petitioner stands in no danger from any threatened action of any Respondent. The trial court's opinion refers to public disclaimers by the Commission, the Attorney General, and the Postmaster General, disclaiming any intention of prosecuting for any violation of the Act before a decision of the Supreme Court sustaining its constitutionality or thereafter seeking penalties for prior offenses. The Petitioner does not contradict or challenge such disclaimers.

Petitioner's bill does not specifically and concretely allege any threat by the Respondents other than that which springs from the mere existence of provisions of the Act conferring authority upon the Commission and the Attorney General to enforce the Act upon the fulfillment of certain conditions. At the hearing Petitioner relied chiefly upon the threat of eventual dismemberment created by the existence of Section 11 (b) and its concern about the invalidation of contracts made in violation of the Act because of the existence of Section 26 (b). By the terms of the Act Section 11 (b) applies only to a registered holding company (which the Petitioner has chosen not to become), and gives the Commission no power to issue orders thereunder prior to January 1, 1938. Nor can a violation of any order under Section 11 (b) be the basis of any criminal prosecution (see Sec. 29). Section 26 (b) merely declares the common law rule of illegality which no Respondent has any color of authority, or has threatened, to enforce.

The temporary injunction offered with the stay protects the Petitioner as fully as the power of the court below can protect the Petitioner from any act or authority to act of any of the Respondents.

18. Respondents admit that the motion for a stay was signed by the Attorney General and by the General Counsel for the Commission without supporting affidavits. The Petitioner raised no objection in the court below to the presentation of the pertinent facts by

the Attorney General without the submission of sworn affida-
274 vits. Counsel for Petitioner in paragraph 26 calls attention to his own unsworn statements in the court below. Respondents aver that the printed documents appended to Respondents' Objections to The North American Company's Petition, Original No. 2559, entitled Argument in Support of Motion to Stay Proceedings, Reply Brief in Support of Motion to Stay Proceedings, and Appendix to Reply Brief in Support of Motion to Stay Proceedings, were submitted to the court below over the signature of the Attorney General and include the statements of facts made to the court below by the Attorney General. These documents are appended together with an affidavit of the Attorney General attesting the truth of the statements of facts therein.

19. The petitioner unfairly and inaccurately states the facts as to the proposed trial and determination of the Electric Bond and Share suits. The Respondents themselves suggested that the trial court reserve full right to withdraw the stay if the Government does not prosecute the Bond and Share suits vigorously and promptly. The Respondents represented to the court below that the Government had already done extensive work on the Bond and Share suits, that the answer of the defendants in such suits was at that time expected within a few weeks, that the Government was cooperating with counsel for such defendants to stipulate a large portion of the facts for the trial. The Attorney General expressly stated to the court below:

"If the Government is not hampered by a number of other actions, the Electric Bond & Share case will come to the Supreme Court for a decision on the substantive merits before any suit involving jurisdictional questions can reach that Court. The stay requested will, therefore, make relatively simple the task of all concerned—this Court, the holding companies, and the Government—and the saving not only to the taxpayers of the country but to the stockholders of the plaintiff holding companies should be really substantial." (Argument on Motion to Stay Proceedings, 24.)

The Petitioner made no effort to, and could not, show that a trial of its suit would be more expeditious than that of the Bond and Share suits.

20. The Petitioner in paragraph 20 of its petition does not fairly present the position of the Government as to the time required to try the Bond and Share suits. The Attorney General did state that the Bond and Share trial might take several months. But he also indicated that the preparation for trial of any suit with any major holding company would take months and that the trial itself would require several additional months. By the time of the proceeding in the trial court the Government was already well into the preparation of the Bond and Share suit. The Government had been unable
275 to make preparation to meet the Petitioner's suit.

21. Paragraph 21 of the Petitioner's Petition states only the bare reasons for the stay urged in the Government's motion; it does not give a fair impression of the careful and thorough explanation of the reasons for the stay given in person and in his briefs by the Attorney General.

22. The Respondents deny each and every allegation of paragraph 22 of the Petitioner's Petition. The Government undertook to demonstrate to the trial court that if, as the Petitioner had alleged in its bill, the provisions of the Act were inseparable, the decision in the Bond and Share suits would necessarily dispose of the issues raised in the Petitioner's bill. But the Respondents went further. As the Attorney General in his Reply Brief stated (13–15):

"On the theory of the plaintiff's own pleadings, therefore, the Bond & Share cases will raise and settle all the fundamental constitutional questions which can be raised and settled in the suits now before this Court. On this point, as on many other points in this proceeding, the plaintiffs have tried to blow both hot and cold. For the purpose of offering an excuse to this Court of equity for bringing suit before complying with simple registration provisions, they have pleaded that the registration provisions are not separable from other provisions of the Act. For the purpose of trying to show a substantial difference between the scope of the issues which can be raised in their cases and the Bond & Share suits, they have argued that the provisions of the Act are separable, that the Act may be constitutional as applied to the Bond & Share companies and unconstitutional as applied to the plaintiffs, and that the Bond & Share suits will not put in issue section 11 and the other sections of which they complain. Whether the Bond & Share suits ultimately are decided in favor of or against the Government, there can be no question that they will decide whether the registration provisions are valid, whether or not separable from the other provisions of the Act, and to what extent the validity or invalidity of any other provisions of the Act may operate as a valid defense for failure to register. Such a decision alone will be enormously helpful in clarifying and defining the proper issues in suits before this Court. Such a decision alone would justify this stay as promoting the orderly processes of the court. The inconsistent positions of counsel in this very case illustrate the fundamental confusion that only such a decision can resolve.

"If, therefore, the court in the Bond & Share suits decides that the provisions of the Act are inseparable, every possible issue of constitutionality under the Act can, and undoubtedly will, be raised. If, on the other hand, the court in the Bond & Share cases decides that the provisions of the Act are separable, such a decision will enormously reduce the issues of law and precisely define the facts relevant to those issues in the cases before this Court, as well as settle issues specifically relevant to such cases as described in the next point in this brief."

276 23. The Respondents deny that the Petitioner has shown that the allegations of the Commission's bill in the Bond and Share suits show that the Bond and Share companies differ essentially from the Petitioner.

There is appended to the Objections in The North American case a copy of the Commission's bill against the Bond and Share Company and twenty-one subsidiary holding companies and a copy of a proposed answer of the Bond and Share Companies which has been handed to the Government to facilitate and expedite preparation for trial. Such answer includes a cross-bill substantially equivalent to the Bill filed in the court below by the Petitioner in this proceeding. There is also appended a copy of a stipulation by which the Attorney General, the Postmaster General, and the members of the Securities and Exchange Commission, the defendants in the bill involved in this proceeding, are to be made cross-defendants to the cross-bill in the Bond and Share suits. All the issues raised by the Petitioner in its bill filed in the court below are therefore bound to be raised and determined in the Bond and Share suits.

24. The Respondents do not deny that the Bond and Share suits may be held to involve only the question of the constitutionality of Section 4 of the Act. But such a restrictive holding, affirmed by the Supreme Court of the United States, will similarly limit and determine the scope of the Petitioner's suit. For the same issues are raised by the Bond and Share cross-bill as by the Petitioner's bill. And such a holding, if made, will be a ruling of the Supreme Court of the United States that Section 4 is separable and that, as the Respondents have always contended, other sections of the Act applicable by their terms only to "registered holding companies" may not be attacked, nor raised by way of defense, except by a company which has already registered under Section 4.

25. The Respondent's emphatically deny Petitioner's allegation that they have not attempted to show that the question of the constitutionality of the Act may well be held to be involved in a much broader and more comprehensive way under the issues presented by Petitioner's bill than those presented by the Bond and Share suits. The Respondents have always contended and specifically urged in the court below that "no fairer or broader test of the Act could be suggested" than the Bond and Share suits, that the Bond and Share system " comes in contact with the Act at more points than any
277 other holding company system", and that the Petitioner's suit is beset with jurisdictional difficulties.

26. The court below found:

"The offer of the plaintiffs to a trial of one or two of the instant cases and suspending proceedings in the others has not been consented to by the defendants. They, however, cannot answer for the fifty odd cases now pending in other courts, which it seems probably will be transferred to this Court. I think that the plan proposed by

the defendants would give all the plaintiffs all the protection needed pending a decision by the Supreme Court and save great amount of labor, time, and expense."

It is a novel suggestion that those who violate a statute on the grounds of its alleged unconstitutionality should have the right to dictate to the Government against which violator the Government should proceed for the purpose of testing the constitutionality of the Act. The Petitioner was offered an injunction which would fully protect the Petitioner's alleged rights so far as the protection sought lay within the power of the court below. A litigant who secures from a lower court the relief he has prayed has no right to seek review by a higher court. Dieterich v. Dieterich, 48 App. D. C. 356.

27. Respondents deny that Petitioner in either paragraph 10 or paragraph 27 of its Petition has shown that a temporary injunction would be less effective than a permanent injunction to protect the Petitioner against the Respondents. What Petitioner seeks is not relief from this Court or the court below against the Respondents, but the right to force its own case or some other case of its choosing to be carried to the Supreme Court of the United States for the purpose of testing the constitutionality of the Act in general. But the Petitioner, having been offered and having refused the only protection the court below could afford, has no right, constitutional or otherwise, to an adjudication of its alleged claims by the Supreme Court. Due process even in a criminal case does not involve a right to an appeal, McKane v. Durston, 153 U. S. 684, 687; Andrews v. Schwartz, 156 U. S. 272, 275, and no one has a right to appeal from a decree in his favor for the purpose of having his future rights declared by a higher court. Dieterich v. Dieterich, supra.

28. Respondents did urge in their briefs and on the oral argument that in their judgment the Petitioner's bill did not state a cause of action for an injunction or declaratory judgment. But the Government did not move to dismiss the bills on these grounds because it did not wish to admit the allegations of the bill even for pro-
278 cedural purposes. The Supreme Court has recently indicated its reluctance to consider issues of constitutionality in a demurrer. Borden's Farm Products Co. v. Baldwin, 293 U. S. 194. The Government merely pointed out, as has already been indicated in Respondent's answer to paragraph 9 of Article III of the Petitioner's Petition, how grave and serious were the questions of equitable jurisdiction involved in the Petitioner's bill and how very real was the possibility that, after a long and protracted trial and successive appeals, the bill might be dismissed upon grounds of equitable jurisdiction without any consideration of the constitutional issues involved.

29. The position of the Government as stated in the argument before the court below involved no improper threat. What the Attorney General said was just this (Argument on Motion to Stay Proceedings, 24–25):

"As chief law officer of the Government, I conceive it to be my duty to exercise such powers as I possess over the course of Government litigation and appeals, to ensure that an important and far-reaching enactment of the Congress is tested fairly and expeditiously. The determination in the suit selected for the testing of this Act may not determine the validity of the Act in its application to a few companies specially circumstanced, but it will determine the fundamental constitutional question involved and as many aspects of the Act as could possibly be determined in any one case with relation to a typical holding company. Because this is true, I have not felt it improper to suggest to the Court that I would feel justified in permitting injunctions issued in other cases by a court of first instance to go unappealed, if need be, in order that a record might be made up for the Supreme Court in the one case which will befit the great constitutional issues involved.

"Likewise, I feel warranted in suggesting that the efforts of the Government so to conduct litigation in the public interest should be recognized by staying proceedings which ultimately will be unnecessary, certainly in part and probably altogether. The granting of a stay and, if desired, a temporary injunction will enable the Court readily to adapt its decrees to the views of the Supreme Court, and will protect every legitimate interest, public and private. The Government might be content, like a private litigant, to exercise all its procedural privileges without explanation. I have, however, discussed these matters and have submitted them for the approval of this Court, because the policy I have indicated is designed not to seize technical advantages for their own sake but to serve substantial interests of the public and its Government with common sense and fairness, and to aid in the orderly disposition of the public business."

30. The announcements of the Respondents disclaiming any intention of bringing prosecutions under the Act until the adjudication of the constitutionality of the Act by the Supreme Court are fairly set forth in the opinion of the trial court.

31. The facts on which the court below granted the stay requested by the Respondents are given in the opinion of the court.

32–33. The trial court correctly stated the apparent attitude of counsel for the Petitioner and the other plaintiffs in regard to the jurisdiction of courts outside of the District of Columbia over suits to restrain the enforcement of the Act. In his Reply Brief the Attorney General stated (36–37):

279 "When the Attorney General told this Court that in his judgment virtually all of the suits brought by the holding companies outside of the District of Columbia were clearly defective because of want of proper venue and because of the absence of power in the District Courts to issue a process for valid service outside of their respective districts, none of the counsel for the plaintiffs chose to dispute the opinions of the Attorney General. Rather, the im-

pression was given that the correctness of the Attorney General's opinion was not denied."

After the Reply Brief of the Attorney General was filed, counsel for the Petitioner requested permission to file and filed a Rebuttal Brief, which in no way attempted to correct the impression left upon Respondents' counsel and upon the court below. Indeed there can be no question that the attempted service of process issued by courts outside of the District of Columbia upon the members of the Commission, the Attorney General and the Postmaster General, does not constitute valid service, Toland v. Sprague, 12 Pet. 300, 330; Harkness v. Hyde, 98 U. S. 476, 488; Robertson v. Railroad Labor Board, 268 U. S. 619, 622. A decree against local federal officers, if granted, would not bind the Commission, the Attorney General or the Postmaster General, and would be futile and ineffective to prevent the subsequent enforcement of the Act by either the Commission or the Attorney General.

IV

The Respondents deny that the action of the court below constituted "a gross abuse of any discretion it may have had in the premises" and aver that the granting of the stay was not only justified but necessary to maintain the orderly processes of justice.

1. Sliosberg v. New York Life Insurance Co., 244 N. Y. 482, has no application to the instant proceeding. That case involved a statutory stay of a legal cause of action and bore no relation to a stay granted by a court of equity to maintain its own orderly processes of justice, particularly when such stay is accompanied by an offer of a temporary injunction according to the plaintiff during the period of the stay as much relief as he could obtain by a final decree. The nature of the Petitioner's suit is such that the delay cannot prejudice its case. There is no risk of the loss of evidence or witnesses. The delay will save the Petitioner and its shareholders the cost of an unnecessarily long and protracted trial.

2. There is no rigid rule of law such as Petitioner's counsel assumes that a court of equity may not, in order to maintain the orderly processes of justice, stay its own proceedings until the disposition of some other proceeding, unless the parties and the
280 issues in the two proceedings are identical. Such identity is not required even where equity is asked to extend its affirmative aid in enjoining the prosecution or continuance of proceedings in other courts. "Avoidance of the burden of numerous suits at law between the same or different parties, where the issues are substantially the same, is a recognized ground for equitable relief in the federal courts", Di Giovanni v. Camden Fire Ins. Assn., 296 U. S. 64, 70, decided November 11, 1935. A rule which does not rigidly prevail even where affirmative relief is asked, cannot apply to a "mere stay of proceedings." Enelow v. N. Y. Life Insurance Co., 293 U. S. 379, 381.

3. The trial court in a carefully prepared opinion has concluded that the stay as allowed was necessary to maintain the orderly processes of justice, and would afford the Petitioner "all the protection needed pending a decision by the Supreme Court and save a great amount of labor, time, and expense." Its action contravened no rule of law or of equity and constituted a fair and judicious exercise of its discretion. Petitioner's extravagant charge that the action of the trial court constituted "a flagrant abuse" of discretion is wholly unsupported and unsupportable by any specific allegations of its Petition or by anything in the proceedings below.

(a) The Respondents in a full and elaborate argument convinced the trial court that the suits brought by the Government against the Bond and Share Companies in their domiciliary jurisdiction in the Southern District of New York were entitled to preference, that such proceedings would be tried promptly, and that they would be tried before the proceedings in this Court, for which the Government was not prepared, could be tried.

(b) The Respondents aver that the stayed suits are no more or less substantially identical with one another than with the Bond and Share suits and that the Bond and Share suits are free of many jurisdictional questions which complicate the stayed suits.

Respondents do not deny that the suits stayed involve substantially similar issues. But counsel for Petitioner in the court below did not urge but denied that the suits stayed were substantially identical. He contended in particular that the American Water Works Company case presented an "absolutely unique" state of facts. He accordingly urged that both cases in which he was counsel, i. e.: The North American and American Water Works cases, should be tried, possibly as a consolidated suit.

(c) It is misleading for the petitioner to allege that the court below which granted the stay cannot control the Bond and
281 Share suits. The court below may withdraw the stay whenever it deems it necessary or proper; and the stay is expressly conditioned upon a diligent and active prosecution of the Bond and Share suits.

(d) A comparative examination of the pleadings will demonstrate that there is not the slightest basis for Petitioner's assertion that the suits stayed will even "probably" be broader or more comprehensive than those in the Bond and Share suits (See Respondents' answer to paragraphs 22 and 23 of Article III of the Petitioner's Petition).

(e) As the trial court found, neither the Petitioner nor any of the other parties stayed could show that they would suffer any irreparable injury from the stay. The practical proof of that absence of injury is that such parties have not even chosen to avail themselves of the temporary injunction offered to them which provides them as full protection as could be provided by any permanent decree of the court below.

(f) The so-called offer made by the parties stayed to select for trial a few of the entire number of suits brought by the holding company interests indicates clearly that the Petitioner's suit and other suits have been brought not to protect alleged constitutional rights but to force the Government to bring to the Supreme Court for adjudication such test suits as the dominant holding company interests may dictate.

4. (a) The Petitioner does not deny that suits brought in other jurisdictions may be recommenced in this District if the stay granted were vacated.

(b) The Petitioner complains that the Respondents have not moved to dismiss the Petitioner's bill for jurisdictional defects. The reasons which prompted the Respondents not to move to dismiss have already been explained in Respondents' answers to paragraphs 8 and 28 of Article III of the Petitioner's Petition. The Petitioner has not been so rash as to assert to this Court, as it asserted to the court below, that its bill was free from any jurisdictional difficulty.

(c) The position taken by the Attorney General in the court below is fully set forth in the answer to paragraph 29 of Article III of the Petitioner's Petition.

5. The Petitioner does not deny that unless the proceedings below were stayed the Respondents would be entitled to extensive continuances and postponements to enable them properly to prepare their defense. The Petitioner has not, and could not, deny
282 that such continuances would not delay the final adjudication of its rights far beyond the time when the Bond and Share suits would be disposed of.

6. The Respondents urged before the court below and urge here that an examination of the pleadings in the Bond and Share suits and in the suits stayed will show that both sets of suits involve substantially identical issues of law and of fact. In representing to this Court that the Respondents urge merely that the Bond and Share suits would serve as a "'valuable precedent' on some of the issues which will ultimately have to be tried in the cases that are stayed", the Petitioner has not fairly stated Respondents' position. What the Attorney General stated in his Reply Brief (page 24) was:

"The factual situations in the plaintiffs' suits and in the Bond & Share suits are, therefore, sufficiently similar to raise substantially the same questions of law, and to make the trial of the facts in the Bond & Share suits a valuable precedent for the treatment of facts when and if cases now before other courts come up for trial."

The Respondents' position is even more specifically explained in their answer to the allegations of paragraphs 22 and 23 of Article III of the Petitioner's Petition.

7. The Petitioner has not ventured squarely to question the power of the court below to grant the stay. The authorities were exhaustively briefed for that court, and Petitioner did not cite any authori-

tative precedent for denying the stay. That the discretion of the trial court was fairly and judiciously exercised is apparent from a reading of its opinion.

Wherefore, the Respondents pray that the Petition for an allowance of a special appeal from the order of Mr. Justice Bailey entered herein on the ninth day of January 1936 be dismissed.

HOMER CUMMINGS,
Attorney General of the United States.
JOHN J. BURNS,
General Counsel,
Securities and Exchange Commission.

283 UNITED STATES OF AMERICA,
District of Columbia, ss:

HOMER CUMMINGS, being first duly sworn, on oath deposes and says that he is Attorney General of the United States and one of the attorneys for the Respondents; that he is informed and believes, and therefore avers that the facts set forth in the Objections to Allowance of Special Appeal are true.

HOMER CUMMINGS.

Subscribed and sworn to before me this 27th day of January 1936.

[SEAL] UGO J. A. CARUSI,
Notary Public.

285 Wednesday, April 8th, A. D. 1936

* * * * * * *

No. 6654

THE NORTH AMERICAN COMPANY, APPELLANT

vs.

JAMES M. LANDIS, GEORGE C. MATTHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY, &C., ET AL.

No. 6655

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, APPELLANT

vs.

JAMES M. LANDIS, GEORGE C. MATHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY, &C., ET AL

The argument in the above entitled causes was commenced by Mr. John C. Higgins, attorney for appellants, and was continued by Mr. Homer Cummings, Attorney General of the United States, for ap-

pellees, and was continued by Mr. Robert H. Jackson, attorney for appellees, and was concluded by Mr. John C. Higgins, attorney for appellants. On motion, appellants allowed to file reply brief, and appellees allowed to file additional memorandum. (Mr. Justice Robb not sitting.)

286 United States Court of Appeals for the District of Columbia

No. 6654

THE NORTH AMERICAN COMPANY, APPELLANT

v.

JAMES M. LANDIS, GEORGE C. MATTHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY &C., ET AL., APPELLEES

No. 6655

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, APPELLANT

v.

JAMES M. LANDIS, GEORGE C. MATTHEWS, ROBERT E. HEALY, AND JAMES D. ROSS, INDIVIDUALLY &C., ET AL., APPELLEES

Appeals from the Supreme Court of the District of Columbia

Decided June 22, 1936

F. D. McKenney, John S. Flannery, G. Bowdoin Craighill, and John E. Larson, all of Washington, D. C., and John C. Higgins, of New York City, for Appellants.

Homer S. Cummings, Robert H. Jackson, Benjamin V. Cohen, and Robert E. Kline, Jr., all of Washington, D. C., for Appellees.

Before MARTIN, Chief Justice, and VAN ORSDEL, GRONER, AND STEPHENS, Associate Justices

VAN ORSDEL, Associate Justice. This is a special appeal from an interlocutory order of the Supreme Court of the District of Columbia staying further proceedings in plaintiffs' suits against the appellees, defendants below. The order staying further proceedings in these suits was passed to await final determination by the Supreme Court of the United States in the case of the securities and Exchange Commission v. Electric Bond and Share Company et al., now pending in the District Court of the United States for the Southern District of New York, or until such time as the case is otherwise terminated.

These suits are for injunctions to restrain the defendants, on the ground of unconstitutionality, from enforcing the provisions of an Act of Congress approved August 26, 1935, Public, No. 333, 74th Cong., 1st Sess., entitled "An Act to provide for control and regulation of public-utility holding companies, and for other purposes." The plaintiffs are holding companies of the class which is required by the Act to register with the Securities and Exchange Commission not later than December 1, 1935. Plaintiffs have not registered, and in their bills declare their intention not to register.

287 The North American Company filed its bill on November 26, 1935, and the American Water Works and Electric Company, Incorporated, filed its bill the next day. The bills invoke the equitable jurisdiction of the court because of irreparable injury which it is averred the Act is already causing plaintiffs, and which plaintiffs will continue to suffer in ever increasing measure until final relief is afforded. The bills set forth fully the basis of the court's jurisdiction, the nature and character of plaintiff's business, the provisions of the Act applicable to the plaintiffs, the grounds for plaintiffs' belief that defendants intend to enforce the Act against them, the reasons why plaintiffs are irreparably damaged through the threatened enforcement against them by defendants of the provisions of the Act, that this damage will be sustained whether plaintiffs register under the Act or not, and the reasons why, in the judgment of the plaintiffs, the Act is unconstitutional.

Simultaneously with the filing of the bills in the plaintiffs' cases, the Securities and Exchange Commission, hereinafter referred to as the Commission, filed a bill against the Electric Bond and Share Company and five of its corporate subsidiaries in the United States District Court for the Southern District of New York. That case will be hereinafter referred to as the Bond & Share case. At approximately the same time that plaintiffs filed their bills, some 48 other bills were filed in the various United States District Courts by other companies seeking substantially the same relief as that sought by the plaintiffs, and at about the same time, and prior to December 1, 1935, five other holding companies filed bills in the Supreme Court of the District of Columbia, seeking substantially the same relief sought by the plaintiffs.

On December 7, 1935, before any answer had been filed by the defendants herein, or by the defendants in any of the above-mentioned suits in the Federal District Courts, or by the defendants in the Bond & Share case, the defendants herein moved for a stay of proceedings to await the final determination of the Bond & Share case. The grounds advanced in support of the motion for the stay were the pendency of the above-mentioned 48 suits in the federal courts; that the Commission had instituted the Bond & Share case for the purpose of determining the constitutionality of the Act, and that it would be prosecuted with all due diligence to the Supreme Court; that the other pending suits would "tend to clog the courts,

overtax the facilities of the Government, and make against that orderly and economical disposition of the controversy that is the Government's aim."

On hearing, the court sustained the motion in the following order:

"This cause coming on to be heard upon motion of the defendants to stay further proceedings herein filed December 7, 1935, the Court having considered the pleadings and the arguments of counsel, and briefs having been submitted herein, it is this 9th day of January 1936:

"Ordered, adjudged, and decreed, that further proceedings herein be and are hereby, stayed upon terms and conditions as set forth in the Opinion of this Court in this cause filed herein the 6th day of January 1936."

In the course of his opinion the court called attention to the grounds upon which plaintiffs opposed the motion for the stay, to the tender of the defendants to submit to a temporary injunc-
288 tion pending a decision by the Supreme Court in the Bond & Share case, and to the contention of plaintiffs "that many of the questions as to the constitutionality of the Act involved in these cases are not involved in the Electric Bond and Share case, and that even if the defendants were temporarily enjoined the plaintiffs would in the meantime suffer irreparable injury by the existence of this act upon the statute books, which would affect the validity of their contracts, their transfer of stocks, and other similar matters."

The court then said:

"In the instant case the relief sought by the plaintiffs is first a relief by injunction against the defendants, and second a declaratory judgment to the effect that the Public Utility Holding Company Act violates the Constitution of the United States and that the Act and each and every part thereof is invalid, null and void.

* * * * * * * * *

"'* * * Courts do not declare statutes constitutional or unconstitutional as such. The judicial function is to determine whether or not under the facts proven at the trial, the application of the legislative enactment to the litigant before the Court invades his constitutional rights.'"

We think, from an examination of the bills in the present cases and the bill in the Bond & Share case, which appears in the record, that many questions arise in the instant cases which would not and could not be disposed of in the Bond & Share case. The sole question, therefore, for our consideration is whether or not the court below was justified in granting the stay in these cases; whether or not in so doing the court abused its discretionary power in the control of its docket.

Unquestionably a court has wide discretionary power in the matter of the order in which cases pending on its docket shall be tried, provided always that undue delay is not occasioned, to the damage of

litigants. This power extends to the determination of which of two cases, pending in the same court or in courts of similar jurisdiction and involving the same issues and the same parties, shall be first heard, but this situation does not obtain in the present controversy. These cases are pending in courts of different jurisdictions, the parties are not the same, the issues involved are not such that the determination of one case would constitute a full determination of the others, nor are there present any of the conditions which would justify depriving plaintiffs of their day in court and an opportunity to be heard. Their bills have been filed, and without even an answer on the part of the defendants, or the bringing of the cases to issue, which might tend to clarify the issues involved, plaintiffs have been deprived, by an order of the court, of their day in court and an opportunity to be heard. They have been stopped in limine and denied the privilege of proceeding further for an indefinite period of time, subject to all the uncertainties surrounding the final determination of the Bond & Share case.

The stay cannot be justified on the ground that the decision in the Bond & Share case may "simplify" the issues or furnish a "valuable precedent" for the determination of the present cases. Indeed, from a comparison of the bill in the Bond & Share case with the bills in the instant cases, it is difficult to conclude that a decision of the Bond & Share case would dispose of all the issues in the present cases. In Rosenberg v. Slotchin, 181 App. Div. 137, 138, 168 N. Y. S. 101, 102, the rule is stated as follows:

289 "It is only where the decision in one action will determine all the questions in the other action, and the judgment on one trial will dispose of the controversy in both actions that a case for a stay is presented. (Dolbeer v. Stout, 139 N. Y. 486, 489; Ogden v. Pioneer Iron Works, 91 App. Div. [N. Y.] 394, 396; Consolidated Fruit Jar Company v. Wisner, 38 id. 369, 375.)"

The Rosenberg Case is also authority for the rule that under no circumstances will a stay in an action be granted until the issues are made.

It is urged that the issues of law in plaintiffs' cases will be greatly simplified by the determination of the Bond & Share case. "Such a conflict, if it exist, is no valid ground for the staying of the plaintiff's proceedings, nor is there any warrant for such a stay to be found in the uncertainty of the law on any question, however unsettled the law and conflicting the decisions." Jenkins v. Baker, 91 App. Div. (N. Y.) 400, 402, 86 N. Y. S. 958, 959.

Where it appears that a party whose suit is sought to be tried has no remedy against his adversary except in the court in which he has brought his action, the opposing party, not having answered or brought the case to issue, is in a poor position to plead for delay. Nor is the plea of the Department of Justice in the present case that it is not equipped to handle the numerous cases which have arisen, because it is involved in other litigation, a valid ground for a blanket

stay in limine of all further proceedings in the present cases for an indefinite and protracted period.

The government of the United States as a litigant has no greater rights than the humblest citizen. While we recognize the difficulty which confronts the Department of Justice in conducting the vast amount of litigation in which the various agencies of the government have become involved, as well as the duty of the courts to be indulgent where possible in the public interest, yet the rights of the citizen are not to be overlooked. He is entitled to be heard in the courts in defense of his rights, if he honestly believe that they have been invaded to his damage, even by an agency of the government. These rights may not be disregarded, to the damage of the litigant, because of any question of mere governmental convenience or public interest, and the discretion of the court should not be swayed by any of these considerations so as to deprive the litigant of his day in court and a prompt and speedy trial.

While it is true that a court of equity has wide discretion, in the public interest, in the exercise of its jurisdiction, yet it may not stay its hand because of such interest if by so doing private rights will suffer. Pennsylvania v. Williams, 294 U. S. 176, 185. That the rights of the plaintiffs in the present cases would suffer by reason of the stay granted is apparent, since the very existence of the Act, whether they register under it or not, must of necessity affect materially the conduct of their business during the pendency of these suits.

The order is reversed.

Separate Opinion of Judge GRONER

GRONER, Judge: Very shortly after this suit was begun the Attorney General filed in the trial court a motion to stay proceedings.

In the motion he said that there had been filed in ten District
290 Courts of the United States at least forty-eight bills of complaint in behalf of 147 plaintiffs, all of which similarly sought to enjoin the enforcement of the Act of Congress approved Aug. 26, 1935, known as the "Public Utility Holding Company Act of 1935." The Attorney General informed the court that he was anxious to secure an early determination of the constitutionality of the Act and to that end he had had the Commission institute a suit in the Southern District of New York against Electric Bond and Share Company and that the suit would be prosecuted with due diligence to secure from the Supreme Court an authoritative determination of the validity of the Act. On the ground that the pending suits would clog the courts and overtax the facilities of the government and militate against an orderly disposition of the controversy, he asked the court to stay proceedings in the instant case. The Attorney General offered to submit to a temporary injunction pending a decision by the Supreme Court in the Electric Bond and Share

case. The court, after hearing, entered an order staying all proceedings pending a decision by the Supreme Court, on condition that the Bond and Share case be diligently prosecuted.

On this appeal the question for our decision is whether the lower court had the right and power to enter the order—and if it had the power, whether the entry of the order in the form in which it appears was an abuse of discretion.

Undoubtedly a Federal District Court may grant a stay in a cause pending before it and may enter such other orders as may be necessary to control the progress of the cause in the interest of justice. Ordinarily such orders are within the sound discretion of the court. A stay of proceedings is sometimes granted for the accommodation of counsel, sometimes because of the absence of witnesses, sometimes because of illness on the part of the counsel or witnesses, sometimes to avoid a multiplicity of suits, sometimes to avoid a conflict of jurisdictions, and perhaps for other grounds which do not occur to me at the moment—all of which show that the right exists. But in every instance that I know of in which a stay has been asked and opposed, the right—where it has been exercised—has been exercised with caution and with the assurance on the part of the court that the rights of the plaintiff will not suffer by the delay. Any other course would be obstructive of justice.

Here the learned judge of the lower court points out that the defendants have offered to submit to a temporary injunction pending a decision by the Supreme Court in the Electric Bond and Share case; and this, he says, will afford just as full relief as a decision in this suit holding the challenged Act of Congress unconstitutional. If, from an examination of the record, I could say that the court's conclusion in this respect were correct, it would be difficult to find any reason for disturbing the order; but I think the conclusion is not sustainable. As is stated by Judge Van Orsdel, there is a marked difference between many of the issues in this case and in the Bond and Share case due primarily to a different corporate set-up; and careful examination of the Act and of the purposes of the two suits shows that even though the Act of Congress may be constitutional as to the Bond and Share Company, it may be unconstitu-
291 tional as to these plaintiffs. In short, that a decision in the one case will not foreclose all questions in the other. Nor is there doubt that the provisions of the Act, even if they ultimately be held unconstitutional, seriously affect the business and affairs of these plaintiffs pending the determination of that question. In that view they are clearly entitled to a speedy trial.—"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, at p. 163. But I mention these matters merely in passing. In my opinion the order entered by the lower court is not such a stay-order as a court ought ever to enter as a matter of discretion. It is substantially an injunction against

these plaintiffs, preventing them for an indefinite period from litigating a question of legal rights which they insist the Act of Congress unlawfully impairs. If, instead, the stay had been temporary, if the court had announced that it would not set the case for trial except at the reasonable convenience of the parties, I would think its action well within its discretion. But here we are confronted with an order restraining litigants from prosecuting their case, grounded upon the theory that, because it would seriously inconvenience the Attorney General to try a number of cases at one time, a selection may be made and the others suspended, not temporarily, for that, in the circumstances would have been reasonable and proper, but indefinitely—even where the parties are different and the rights and interests not identical.

In addition to all of this, the motion was made without bringing the case to issue. No answer or pleadings of any kind in defense have been filed. The order was entered at the very threshold of the court. In any case, this is premature. The trial court should require defendants to bring the case to issue and then—if the circumstances are such as indicate that no harm will be done in a reasonable postponement of the trial—it may very well be that the court, in the exercise of its discretion, can delay the trial temporarily.—In other words, take such action in relation to the progress of the cause on its own docket as may then seem to it equitable and fair. But the present order goes beyond that limit and in that respect was improvidently entered.

STEPHENS, Associate Justice, dissenting.

I am unable to agree that the trial court abused its discretion. The facts, as I understand them, are these: The appellants (plaintiffs below, and hereinafter called plaintiffs), the North American Company and the American Water Works and Electric Company,[2] public utility holding companies, each filed a suit in the Supreme Court of the District of Columbia seeking to enjoin enforcement of Title I of the Public Utility Act of 1935 (hereinafter referred to as the "Act"), alleging threats of enforcement by the appellees (defendants below and hereinafter called defendants), the members of the Securities and Exchange Commission, the Attorney General, and the Postmaster General; and the plaintiffs sought a declaratory judgment that the Act, in all of its parts, was unconstitutional. They had refused to register under the Act, thereby subjecting themselves, so they asserted, to grievous prohibitions against, and penalties upon, divers of their business activities. But they said also that if they did register, they would become subject to regulation, control and reorganization, pending ultimate dismemberment and destruction under Section 11, the so-called death sentence provision, of the Act. They asserted further that the existence of the

292

[2] The full names of the companies are "The North American Company" and "American Water Works and Electric Company, Incorporated."

Act, clouded title to their investments, interfered with their freedom of contract and injured their credit—all to their irreparable damage. Five other similar suits had been filed by holding companies against the same defendants in the Supreme Court of the District of Columbia. In ten or more other Federal courts in various parts of the United States, forty-nine additional similar suits had been filed against agents of the Securities and Exchange Commission, United States District Attorneys, representatives of the Post Office Department, and the defendants in the instant cases. But for lack of personal service upon the latter, it was not unlikely that these suits, or many of them, would be brought to a conclusion by either dismissal or default, and that in their stead new suits would be filed in the Supreme Court of the District of Columbia. On or about the same date that the plaintiffs' suits were filed, the Securities and Exchange Commission commenced, in the United States District Court for the Southern District of New York, a suit against the Electric Bond and Share Company and five of its principal subsidiaries; and there were later by supplemental bill of complaint brought into that suit sixteen more members of the Electric Bond and Share Company system. The New York suit was brought under Section 18 (f) and Section 18 (g) of the Act to compel the defendants to register and to restrain them from activities prohibited in the absence of registration. It was a test case comprehensive in nature.

In these circumstances the defendants in the instant cases moved to stay all the proceedings relating to the validity of the Act until its validity had been determined by the Supreme Court of the United States in the New York suit or until that case otherwise terminated. This motion was supported by oral and documentary representations which, for the purposes of this appeal, were by stipulation embodied in an affidavit and exhibits made a part thereof (including the bill of complaint and the amended and supplemental bill of complaint in the New York suit). In substance these representations were that: There would be a substantial identity of issues in the local suits and in the New York suit; all of the suits were complex; the local suits would require extensive investigations of fact at great expense in both funds and time before answers could be formulated and filed; the preparation and trial at the same time of the local suits and the New York suit would overburden the Commission and its counsel; the trial of the local suits would overburden the Supreme Court of the District of Columbia. In moving for the stay the defendants offered the following terms: They would not enforce the Act as against the plaintiffs until it had been determined to be constitutional by the United States Supreme Court in the New York suit, and then only in respect of acts or omissions thereafter occurring; and they would submit to a temporary injunction against enforcement of the Act.

The motion for a stay was resisted by the plaintiffs upon the grounds, in substance, that: The issues in the local suits and

293 in the New York suit would not be the same; even if the defendants were subjected to an injunction, still the existence of the Act would injure the plaintiffs' business in the manner asserted in their bills of complaint. To the latter ground the defendants rejoined that no more prompt determination of the constitutionality of the Act was probable in the local suits than in the New York suit.[3]

The problem thus presented to the trial court by the motion to stay and the plaintiffs' opposition thereto was administrative in nature, not substantive, that is to say, it was one which a court decides according to its discretion, rather than under a rule. Where a court acts by rule, it can decide but one way without error. But where its decision is according to discretion, it may decide in either of two (and sometimes more) ways without disturbance of its ruling on appeal—provided its decision is actuated by proper and adequate representations or data and is not unreasonable in respect of the rights concerned.

Were the representations and data before the trial court proper and adequate? The points especially urged in support of the motion to stay were the complexity and burdensomeness of the local and the New York suits, and the substantial identity of issues therein. As to the former: The contents of the affidavit of the Attorney General and of the bills of complaint in the several causes were, I think, sufficient to inform the court of the nature of the suits and to warrant it in concluding that they would be complex and burdensome in respect not only of the requisite preparation but in respect also of the time required for trial. Indeed, there was no substantial dispute on this topic except that the plaintiffs offered to reduce the local litigation to a few test cases. But the court was not bound to conclude from the representations on this subject that this was within the power of the plaintiffs. As to the substantial identity of the issues: In the technical sense the pleadings were not closed; that is to say, at the time the motion to stay was presented to the trial court, no answers had been filed in either the local suits or in the suit in New York. But it is to be borne in mind that the stay was not asked for upon the ground that a decision in the New York suit would, in the technical sense, be res judicata as to the local suits. This it could not be, for lack of technical identity of parties. The proposition advanced was that the rulings in the New York suit would be practically fruitful to simplify, if not to dispose of, the local litigation. In this view I think formal answers are not the only data which a court may properly consider in reaching a conclusion. It may consider oral representations and documents, apparently informative and reliable.

[3] The defendants further rejoined that they had made widespread public announcement that the Act would not be enforced until the determination of its constitutionality by the United States Supreme Court in a test case, and had instructed the agents of the Commission, District Attorneys, and postmasters throughout the United States to such effect; and that in these circumstances, or if the temporary injunction were imposed, the plaintiffs could present no case or controversy for determination of the constitutionality of the Act in respect of its mere existence.

Such data the trial court had before it through the Attorney General, counsel for the Commission, and the plaintiffs' counsel.

294 It would serve no useful purpose to set forth in detail the data, oral and documentary, which, it appears from the record and briefs, was thus presented to the trial court. Briefly, however, it included material informing the court that: The plaintiffs are parent public utility holding companies; they own stock—more than 10% of the voting securities [4] in subsidiaries; some of the subsidiaries are themselves holding companies, and some are operating companies; the holding subsidiaries themselves own stock in holding companies and operating companies. The business of the systems (so far as is relevant to the litigation) is the production and marketing of electricity and gas. This is transmitted across state lines by the operating companies which are subsidiary to the holding companies which are themselves immediately subsidiary to the parent holding company. Service, sales and construction contracts (forbidden by the statute in the absence of registration) involving interstate commerce exist in the plaintiff North American Company system between at least one holding company immediately subsidiary to the parent on the one part, and its subsidiaries on the other. Similar service, sales, and construction contracts exist between the plaintiff American Water Works and Electric Company, the parent itself, and its subsidiary operating companies; and at least one immediate holding subsidiary of the American Water Works and Electric Company has entered into service, sales, and construction contracts with its subsidiary operating companies. Neither of the plaintiff parent companies nor any of the companies within their systems has registered.

In the New York suit the defendant Electric Bond and Share Company is a parent public utility holding company; it owns stock in subsidiary holding companies; each of these is the parent of a system comparable in character and extent to the system of which each of the plaintiffs is a parent; these holding companies immediately subsidiary to the parent Electric Bond and Share Company, or a part of them, severally own stock in holding companies and in operating companies. The last mentioned holding companies, or a part thereof, in turn severally own stock in holding companies, which latter again own stock in operating companies. The business of the system (so far as is relevant to the litigation) is the production and marketing of electricity and gas. This is transmitted across state lines by the operating companies. All of the above mentioned companies, holding and operating, or such of them as typify the structure and activities described, are defendants in the New York suit. Service, sales, and construction contracts involving interstate commerce exist, in the Electric Bond and Share system, between a company immediately subsidiary to the parent Electric Bond and Share

[4] It is such ownership that, under the Act, constitutes a company a holding company.

Company, and a company immediately subsidiary to that subsidiary, on the one part, and the holding companies immediately subsidiary to the parent, and their operating subsidiaries, on the other. Neither the parent Electric Bond and Share Company nor any of the companies within its system has registered. The local suits and the New York suit were brought for the purpose of testing the con-
295 stitutionality of the Act in all of its parts, in respect of the activities of the systems, and of the units thereof, respectively involved.

With such information before it concerning the local suits and the New York suit, and especially in view of the common object of the suits, I think the trial court could reasonably conclude that the New York suit would probably yield rulings as to the constitutionality of the Act and its parts, as to the separability of the parts, as to what is interstate commerce for electric and gas public utility holding companies—whether acting through immediate subsidiaries or through those more remote in the corporate structure—as to the constitutionality of the registration provision as such, and as to the effect upon the constitutionality of the registration provision of the prohibitions and penalties attendant upon non-registration and of the supervisory powers given to the Commission in the event of registration, including the effect of Section 11. And I think that the trial court could reasonably conclude that these rulings would be in respect of statutory and factual patterns enough like those involved in the local suits to make the rulings in the New York suit practically fruitful for simplification, and perhaps for disposition, of the local suits, even though the rulings in the New York suit would not be strictly res judicata as to the local suits. I conclude, therefore, that the court's decision was actuated by proper and sufficient representations and data.

Was the court's decision reasonable in respect of the rights of all concerned? As to the length of the stay, it is suggested that it is never to end except upon the determination in the New York suit of the validity of the Act by the Supreme Court of the United States, or until the termination of that suit otherwise. The stay motion was in such terms, literally, made, but it was not in such terms granted. It was "Ordered . . . that further proceedings . . . be and are hereby stayed, upon the terms and conditions as set forth in the Opinion of this Court . . ." The opinion indicates that the stay was granted for a definite purpose and upon definite conditions. The purpose was the saving of a "great amount of labor, time, and expense" through a prior decision in the New York suit, which "even if it should not dispose of all the questions involved, would certainly narrow the issues in the pending cases and assist in the determination of the questions of law involved."[5] The conditions were "a

[5] Presumably the court had in mind the saving of labor, time and expense not only for the parties and counsel but also for itself, a court of the same sovereignty as, and a court of parallel jurisdiction with, the United States District Court for the Southern District of New York.

diligent and active prosecution of the Electric Bond and Share case." Moreover the court said that "In view of their assurances [the court was referring to the announcements, above referred to,[6] of the Commission, the Attorney General and the Postmaster General] given before the filing of these suits, however, it would hardly seem necessary to issue a formal injunction, unless the plaintiffs insist upon it." The plaintiffs did not insist upon it and no formal injunction was entered; but clearly the stay was conditioned upon non-enforcement of the Act. The order is interlocutory in nature and therefore remains within the control of the court which made it.[7]

296

If, during the progress of the New York suit it is made to appear to the trial court that the purpose of the stay will not be served, or that its conditions are not being fulfilled, the trial court may, and I think it should be assumed will, terminate the stay. Thus, if it is made to appear, as the New York suit progresses, that the issues of fact and law therein are not to be what, at the time of the stay order, the trial court reasonably concluded they would be, so that rulings fruitful for the local suits are improbable and labor, time, and expense therefore not to be saved, or if it is made to appear that the New York suit is not being diligently prosecuted by the Commission or that, for whatever reason, it is not going forward actively, then the trial court will, I have no doubt, terminate the stay. Or if it should be made to appear that the assurances of non-enforcement are not being adhered to, the trial court will impose an injunction, or terminate the stay.

But the terms of the stay were such that, if its conditions remain fulfilled and its purpose continues probable of accomplishment, it may operate for a substantial period of time, and thus the plaintiffs' day in court in their own cases may be substantially postponed. But I am unable to agree that this makes the stay unreasonable. The right of the plaintiffs to be heard with reasonable promptness was not the only right involved in the administrative problem confronting the trial court. There was also the right of third parties—the plaintiffs and defendants in the various cases, civil and criminal, in the usual course of the judicial business of the Supreme Court of the District of Columbia—to seasonable trials; and there was, in addition, the right of the public through its agents, the defendants, to an adequately presented defense of the cases brought by the plaintiffs locally and of the many other similar cases not unlikely to be tried locally, and to an adequate and comprehensive test of the constitutionality, in the New York suit, of a statute of great public significance. Whatever solution of the administrative problem the trial court reached would affect all of these rights. It was inevitable from the very nature of the problem that at least one of them would be to some extent impaired. The exercise of the plaintiffs' right to a

[6] In footnote 1.

[7] It was suggested by the plaintiffs that possible successors in office of the defendants might not feel bound by the present assurances of non-enforcement.

reasonably prompt day in court had, obviously, to a large extent been made unnecessary by the agreement of the defendants not to enforce the statute—this agreement to be made good by injunction if necessary; that is to say, the plaintiffs had in large part gained by this agreement what they would have gained by immediate and successful prosecution of their causes. Nevertheless, it is obvious also that their right to a reasonably prompt day in court (to the extent it may have been necessary for a ruling in respect of the mere existence of the statute and its cloud on their business, irrespective of enforcement—assuming in the plaintiffs' favor that there would have been a case or controversy for such a ruling) was impaired, through postponement, by the trial court's decision granting the stay. But a decision to the contrary, denying the stay, would have impaired the other rights involved: For the court to deny the stay was for the court to bring on for trial the plaintiffs' cases, complex and burdensome, not unlikely the five similar cases already filed
297 locally, not unlikely forty-nine others filed elsewhere but without jurisdiction of the defendants, and not inconceivably many more. Under the plaintiffs' theory each utility must in its own protection present its own case on its own facts. This would be to clot the flow of justice and to defer the day in court of the third party plaintiffs and defendants seeking to litigate their causes, civil and criminal; and this would be to engage the Commission and its counsel on so many legal battle fronts at once as likely to make inadequate their preparation and presentation of a defense in the local suits, and their preparation and presentation of a plaintiff's case in the comprehensive test suit in New York. Moreover, in no effective manner could such impairment of the rights of third parties and of the public be minimized by the plaintiffs or by the court as was impairment of the plaintiffs' right minimized by the defendants—so far as enforcement of the statute is concerned—through the agreement of non-enforcement, and, virtually by the court, through injunction. Even a middle course ruling—allowing the defendants short stays from time to time in the local cases rather than ruling categorically for or against the stay motion—would have been a ruling differing largely in form rather than in substance from the granting of the stay, and would hardly better have protected the plaintiffs. In short, it was inevitable that whichever way the trial court ruled, it would to some extent impair some of the rights involved. In these circumstances it cannot, I think, be said that the trial court was guilty of an abuse of discretion in granting the stay, for the same reasoning would make it guilty of abuse if it denied the stay, or took the middle course; this is reductio ad absurdum; the court could not decide at all.

I think no useful purpose would be served by a detailed discussion of the many authorities presented in the briefs on both sides. They differ so substantially in their facts from the instant problem that they do not constitute persuasive rulings. Indeed, there is no

real dispute as to the ultimate proposition here involved, that is to say, as to the existence of power in a trial court, provided it acts upon proper and adequate data and reasonably, to solve according to discretion, rather than rule, and free of review, an administrative problem involving conflicting rights. In Kansas City Sou. Ry. v. United States, 282 U. S. 760, 763, the Supreme Court said:

"The question is thus one for the sound discretion of the District Court, in which such a suit is brought, to determine whether it should be permitted to continue or proceedings therein should be stayed, pending the final outcome of an earlier suit for the same purpose, to the end that there may not be a multiplicity of suits without substantial reason."

I think that the decision of the trial court—permitting an adequate and comprehensive test of an act the meaning and constitutionality of which it was important to the public at large to have determined, but permitting this upon terms which gave to the plaintiffs in large part what they would have gained by immediate and successful trial of their causes (thereby minimizing the consequence of postponement thereof), probably saving the parties and counsel and the courts much duplication of labor and expense, and keeping the Supreme Court of the District of Columbia free to carry on, in the usual course, its general judicial business—was a reasonable decision, properly within the scope of the trial court's discretion.

I think that the order of the trial court should be sustained.

298 Monday, June 22nd, A. D. 1936

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No. 6655. April Term, 1936

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, APPELLANT

vs.

JAMES M. LANDIS, GEORGE C. MATTHEWS, ROBERT E. HEALY AND JAMES D. ROSS, INDIVIDUALLY, &C., ET AL.

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the order of the said Supreme Court in this cause be, and the same is hereby, reversed, and that this cause be, and the same is hereby, remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

Per MR. JUSTICE VAN ORSDEL.

JUNE 22, 1936.

Separate opinion by Mr. Justice GRONER.
Dissenting opinion by Mr. Justice STEPHENS.
Mr. Justice ROBB took no part in the consideration or decision of this case.

299 United States Court of Appeals for the District of Columbia

No. 6655

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, APPELLANT

vs.

JAMES M. LANDIS ET AL., APPELLEES

Designation of record

Now come James M. Landis, George C. Mathews, Robert E. Healy, James D. Ross, Homer Cummings, and James A. Farley, appellees in the above-entitled cause, and designate the following for inclusion in the transcript of record to the Supreme Court of the United States:

1. Printed record in the Court of Appeals;
2. Petition for allowance of special appeal;
3. Objections to allowance of special appeal;
4. Minute entry showing argument of cause;
5. Opinions of the Court of Appeals;
6. Decree of the Court of Appeals;
7. This Designation of Record;
8. Clerk's certificate.

ROBERT H. JACKSON,
Assistant Attorney General and Special Counsel to the Securities and Exchange Commission.
BENJAMIN V. COHEN,
Special Assistant to The Attorney General.

Service of a copy of the above Designation of Record is hereby acknowledged.

J. S. FLANNERY.

Dated: Washington, D. C., July 8, 1936.

(Endorsed:) No. 6655. American Water Works and Electric Company, Incorporated, Appellant, v. James M. Landis et al. Designation of Record. United States Court of Appeals for the District of Columbia. Filed July 8, 1936. Moncure Burke, Clerk.

300 United States Court of Appeals for the District of Columbia

I, Moncure Burke, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing printed and typewritten pages numbered from 1 to 299, inclusive, constitute a true copy of the transcript of record and proceedings of

the said Court of Appeals as designated by counsel for Appellees in the case of American Water Works and Electric Company, Incorporated, appellant, vs. James M. Landis, George C. Mathews, Robert E. Healy, and James D. Ross, Individually, &c., et al., Nos. 6655, and 2560 Original, April Term, 1936, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 9th day of July, A. D. 1936.

[SEAL]

MONCURE BURKE,
Clerk of the United States Court of Appeals for the District of Columbia.
By C. PRESTON GAINOR,
Assistant Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1936

301 Supreme Court of the United States

Order allowing certiorari.

Filed October 12, 1936

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, and the case is advanced and assigned for argument at the head of the call on Monday, November 9, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File Nos. 40761, 40762. District of Columbia, U. S. Court of Appeals. Term No. 221. James M. Landis et al., petitioners, vs. The North American Company. Term No. 222. James M. Landis et al., petitioners, vs. American Water Works and Electric Company, Incorporated. Petition for writs of certiorari and exhibit thereto. Filed July 24, 1936. Term Nos. 221 O. T. 1936, 222 O. T. 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936

INDEX

	Page
Opinions below	2
Jurisdiction	2
Statute involved	2
Questions presented	2
Statement	3
Specification of errors to be urged	23
Reasons for granting the writs	24
Conclusion	39

CITATIONS

Cases:

Ashwander v. *Tennessee Valley Authority et al.*, 297 U. S. 288 — 9

Di Giovanni v. *Camden Ins. Assn.*, 296 U. S. 64 — 26

Enelow v. *New York Life Insurance Co.*, 293 U. S. 379 — 26

Ex parte La Prade, 289 U. S. 444 — 9

Fourniquet v. *Perkins*, 16 How. 82 — 32

Friedman v. *Harrington*, 56 Fed. 860 (C. C. Mass. 1893) — 28

Gordon v. *Ominsky*, 294 U. S. 186 — 30

Hatch v. *Wallamet Iron Bridge Co.*, 27 Fed. 673 (C. C. Ore. 1886) — 37

Jenkins v. *Baker*, 91 App. Div. 400 (N. Y. 1904) — 31

Kansas City Southern Railway v. *United States*, 282 U. S. 760 — 21, 26, 32, 33, 37

Liberty Warehouse Co. v. *Grannis*, 273 U. S. 70 — 9

Penn General Casualty Co. v. *Pennsylvania*, 294 U. S. 189 — 30

Pennsylvania v. *Wheeling & Belmont Bridge Co.*, 18 How. 421 — 36

Pennsylvania v. *Williams*, 294 U. S. 176 — 29

Perkins v. *Fourniquet*, 6 How. 206 — 32

Rosenberg v. *Slotchin*, 181 App. Div. 137 (N. Y. 1917) — 30

Spielman Motor Co. v. *Dodge*, 295 U. S. 89 — 13

United States v. *Swift & Co.*, 286 U. S. 106 — 36

Statutes:

Judicial Code, as amended:

Sec. 240 (a) — 2

Miscellaneous:

Report of the Committee on Interstate and Foreign Commerce of the House of Representatives, pursuant to H. Res. No. 59, 72d Cong., 1st Sess., and H. J. Res. No. 572, 72d Cong., 2d Sess., House Report No. 827, Part 3 — 15, 16, 17

83315—36——1

In the Supreme Court of the United States

OCTOBER TERM, 1936

NOS. —

JAMES M. LANDIS ET AL., PETITIONERS

v.

THE NORTH AMERICAN COMPANY, RESPONDENT

JAMES M. LANDIS ET AL., PETITIONERS

v.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED, RESPONDENT

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION

The Solicitor General, on behalf of the petitioners, prays that writs of certiorari issue to review the decree (AR. 284, NR. 280)[1] of the United States Court of Appeals for the District of Columbia, which was entered June 22, 1936, reversing an order of the Supreme Court of the District of Columbia (AR. 46, NR. 47) entered January 9, 1936.

[1] The record in the American Water Works and Electric Company case will be designated AR., and the record in The North American Company case will be designated NR.

OPINIONS BELOW

The opinions of the United States Court of Appeals for the District of Columbia (AR. 271, NR. 266) were filed June 22, 1936, and are unreported. The opinion of the Supreme Court of the District of Columbia (AR. 40, NR. 42) was filed January 6, 1936, and is unreported.

JURISDICTION

The decree of the United States Court of Appeals sought to be reviewed was entered on June 22, 1936. Jurisdiction to issue the writs requested is found in the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATUTE INVOLVED

The suits were instituted by the respondents, unregistered holding companies, against the petitioners to enjoin enforcement of the Public Utility Holding Company Act of 1935 (49 Stat. 803, hereinafter generally referred to as the Act) on the ground that the Act is unconstitutional in its entirety. A copy of the Act is appended to this petition.

QUESTIONS PRESENTED

I. *Power.*—Has the Supreme Court of the District of Columbia power, temporarily and conditionally, to stay a suit for a permanent injunction in that court, pending the final disposition by the Supreme Court of the United States of a suit in-

stituted in the same or another United States district court involving substantially similar issues of fact and law although not between the identical parties, if the Supreme Court of the District of Columbia finds the stay necessary to promote the orderly processes of justice and if that court offers the plaintiffs a temporary injunction during the stay?

II. *Abuse of discretion.*—Assuming that the Supreme Court of the District of Columbia has such power, was that court guilty of an abuse of discretion in granting such a temporary and conditional stay of the respondents' suits or was such action a proper exercise of the court's control over its own process?

STATEMENT

More than forty suits, all having the common purpose of enjoining *in limine* the enforcement of an Act of Congress before it could be put into practical operation, had been instituted in various federal courts throughout the country during November and early December, 1935. Seven of these had been instituted in the Supreme Court of the District of Columbia. Each of these suits involved questions which would require decision in each of the other suits. The trial and preparation for trial of these suits, each of which was of the magnitude of an important anti-trust action, would necessarily have been protracted, and would have necessitated an elaborate examination of intricate inter-

corporate relationships, consuming a great amount of time and effort of the courts as well as of the parties.

To avoid the clogging of the court's calendar with a multiplicity of suits prosecuted for a common purpose and to promote orderly and economical judicial administration, a motion was made by the Attorney General, on December 7, 1935, that the Supreme Court of the District of Columbia should stay its own proceedings in the suits pending before it until a consolidated suit involving similar issues of fact and law already instituted by the Securities and Exchange Commission in another federal district against certain representative holding companies had been disposed of. The trial court—after satisfying itself that the consolidated suit already begun would completely resolve or very substantially narrow the issues involved in the suits before it, and that the plaintiffs in those suits would be adequately protected in the interim—ordered the proceedings in the suits before it stayed conditionally and temporarily pending the final disposition of the consolidated suit brought by the Commission. The Court of Appeals, with one separate concurring opinion and one dissenting opinion, reversed the action of the trial court and held in effect that a stay may not be granted in the discretion of the trial court, pending the disposition of another suit, unless the disposition of the suit tried will render the others technically *res adjudicata*.

A. THE GOVERNMENT'S POSITION BEFORE THE TRIAL COURT

The Government suggested to the trial court that proceedings in the seven suits [2] filed in that court to contest the validity of the Act be stayed pending the final disposition of the civil suits which the Commission had already instituted against Electric Bond and Share Company and its principal intermediate holding company subsidiaries in the United States District Court for the Southern District of New York. The Government urged that the stay was necessary to promote the orderly processes of justice for the following reasons:

(1) The terms of the Act required certain types of utility holding companies to register with the Commission prior to December 1, 1935, or to refrain from conducting certain kinds of interstate commerce after that date. On December 1, 1935, the Government was confronted with more than forty suits (exclusive of stockholders' suits) filed on behalf of more than one hundred plaintiffs in at least twelve different federal district courts (AR. 99, NR. 101). All of such suits in effect sought to obtain a declaration that the Act was unconstitu-

[2] The plaintiffs in two of these seven suits are the present respondents. The plaintiffs in four of the other suits have stipulated with petitioners that their suits shall be governed by the disposition of the present suits. The plaintiff in the last of the seven suits, after hearing on the motion for the stay, ceased to be a holding company within the meaning of the Act, and dismissed its bill of complaint.

tional in its entirety and to enjoin the enforcement of the Act against the plaintiff holding companies, none of which had registered as required by the Act. Seven of these suits had been filed in the Supreme Court of the District of Columbia, and there was reason to believe that, if the stay were not granted, many other suits would be filed in this District, since virtually all the suits outside of the District were jurisdictionally defective as to the petitioners—Washington officials—for want of valid service and proper venue (AR. 241, NR. 238).

(2) While the bills filed against Government officials, including the bills of the present respondents, differed somewhat in detail, all admittedly raised the same fundamental questions of law as to the validity of the Act (AR. 255–256, NR. 251–252). Each bill admitted that the plaintiff was a holding company within the meaning of the Act and that the Act, if valid, required the plaintiff to register. Although none of the plaintiffs in any of these suits had registered and for that reason none of the specific regulatory provisions applicable solely to registered companies and their subsidiaries were applicable to these plaintiffs, the bills all sought to have the Act in its entirety declared unconstitutional and to have the enforcement of all of its many regulatory provisions enjoined. Although there might be special circumstances affecting a particular company which might, in due course, after the determination of the validity of the registration provisions of the

Act, require a judicial determination of the effect of certain specific regulatory provisions of the Act upon that particular company, there was no justification for clogging the calendars and overtaxing the facilities of the courts with complicated, multiplicitous, and expensive suits when one authoritative decision from this Court could dispose of the major issues of law involved. This was particularly true in light of the fact that the Government had taken every possible precaution to safeguard the rights of the holding companies pending a decision by this Court upon the constitutionality of the Act.

(3) On November 26, 1935, five days before the effective date of the Act, the Commission, pursuant to express authority under section 18 of the Act, filed a consolidated suit to compel certain holding companies in the Bond and Share system to register with the Commission or refrain from certain specified acts in interstate commerce or through the mails. These suits were commenced in the United States Court for the Southern District of New York, the district of the home office of the Electric Bond and Share Company, before any bills to enjoin enforcement of the Act had been filed in the Supreme Court of the District of Columbia. The Electric Bond and Share system is the best known and one of the oldest of the great public-utility holding-company systems. It controls nearly fifteen per cent of the privately owned electric utility industry in the country. It comes

in contact with the Act at more points than any other holding-company system. Moreover, the suit was filed not only against the Electric Bond and Share Company itself but against five of its principal intermediate holding-company subsidiaries as well, with sixteen more holding-company subsidiaries subsequently added, with the Government's consent, as parties to the suit. Of these twenty-two defendants, thirteen are, by the terms of the Act, required to register with the Commission as holding companies in their own right; nine of the intervening companies either are not holding companies or are exempt from the Act as predominantly intrastate companies or as operating companies by virtue of section 3 (a) (1) and 3 (a) (2). Counsel for the Government informed the trial court that the Bond and Share defendants were preparing an answer and cross-bill which would attempt to contest the validity and enjoin the enforcement of the entire Act in the same manner as the respondents and others were attempting to do in their suits. Such answer and cross-bill were filed before the hearing of respondents' appeals.[3] (AR. 104, NR. 106.)

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[3] By stipulation (AR. 226, NR. 223), the Attorney General, the Postmaster General, and the members of the Securities and Exchange Commission, the defendants in the suits involved in the present appeals, have become cross-defendants to the cross-bill in the Bond and Share suits, thereby making all of the defendant-petitioners against whom suits have been instituted in this District parties to the Bond

(4) The suits instituted against the Bond and Share companies to compel compliance with the Act would more certainly provide a speedy and effective adjudication of the validity of the Act by this Court than would suits brought on alleged equitable grounds to restrain enforcement of the Act and to have it declared a nullity. The suits instituted against the Bond and Share companies were expressly authorized by section 18 of the Act. They were not subject to attack on jurisdictional grounds. In contrast, in the suits brought to restrain enforcement of the Act, the equitable jurisdiction of the court—i. e., the justification for application of the extraordinary remedies of equity—was open to serious contest both upon the law and the facts. The disclaimer on the part of Government officials of any intention to prosecute the plaintiffs for violation of the Act raised the question whether there was any case or controversy existing between the plaintiffs and the defendants. *Ex parte La Prade,* 289 U. S. 444; *Liberty Warehouse Co.* v. *Grannis,* 273 U. S. 70; *Ashwander* v. *Tennessee Valley Authority et al.,* 297 U. S. 288. And the failure of the plaintiffs to register raised the question whether they could contest the validity of those provisions of the Act which apply by their terms only to "registered"

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and Share suits and ensuring beyond peradventure the right of the Bond and Share companies to contest every provision of the Act and every point of law which could conceivably be raised by the respondents in the suits stayed.

companies.[4] It was therefore not improbable that after protracted trials in the lower court and successive appeals finally reaching this Court the complaints in such suits would be dismissed upon grounds of equitable jurisdiction without any consideration of the substantive constitutional issues.

Whether the Bond and Share suits were ultimately to be decided in favor of or against the Government, a comparison of the pleadings in the Bond and Share suits with the pleadings in the suits stayed demonstrated beyond doubt that the Bond and Share suits would decide whether the registration provisions of the Act were valid; whether such provisions were separable from other provisions of the Act; to what extent the validity or invalidity of other provisions of the Act might operate as a valid defense for failure to register; and to what extent the validity or invalidity of other provisions of the Act applicable by their terms only to registered companies might be raised by unregistered companies in an independent or

[4] Section 4 (a) of this Act makes it unlawful for certain types of public-utility holding companies after December 1, 1935, to use the mails or channels of interstate commerce to carry on certain activities unless they shall have filed with the Securities and Exchange Commission, as provided in section 5, a notification of registration and thereafter a registration statement containing certain information regarding their activities and intercorporate relationships. Virtually all other provisions of the Act by their terms are applicable only to registered holding companies and their subsidiaries, and are not enforceable against holding companies or their subsidiaries unless and until they do register.

cross-bill in equity. Such a decision would of necessity define the major issues of law and of fact in the suits before the trial court and would eliminate altogether the need of further litigation or substantially reduce its scope. Certainly none of the suits sought to be stayed would afford as broad, as comprehensive, or as certain a decision as to the validity of the Act as the Bond and Share suits.

(5) To present to a court a true picture of the affairs and position of any holding company, it was important that the court should have before it all of the principal companies in the system of which that holding company was a part. The Government had made all the principal holding companies in the Bond and Share system parties defendant to its test suits and had brought the suits in one proceeding in the Southern District of New York where all of these defendants had their principal places of business and could be served. In contrast to the Government's care in bringing an entire holding-company system before the courts, it was significant that neither The North American Company nor American Water Works and Electric Company, respondents, had chosen to join all of the principal holding companies in its system in its suit before the trial court, and that other holding companies in each of these systems had actually brought suits outside of the District of Columbia (AR. 99, NR. 101). Likewise, the other plaintiffs in the trial court were but parts of holding-company systems which, through other com-

panies, had instituted proceedings outside of the District of Columbia (AR. 99, NR. 101).

(6) To ensure preservation of the rights of all companies subject to the Act during the pendency of the Bond and Share suits, the Government had taken action in three directions. As a first step—taken before any suits were filed in the trial court—the Commission had issued regulations expressly permitting a holding company when registering to reserve any legal or constitutional right and to stipulate that its registration should be void and of no effect in the event that such a reservation should be judged invalid or ineffective (AR. 52, NR. 54). As a second step—taken before any suits were filed in the trial court—the Attorney General and the Commission had announced that the Commission would take prompt steps to test the Act in a civil suit; that until the validity of the Act had been determined by this Court in such a civil suit, neither the Attorney General nor the Commission would seek to enforce the criminal penalties of the Act; and that even after such determination they would not seek to exact penalties for earlier offenses (AR. 53–58, NR. 55–60). As a third step, the Postmaster General had announced that even if he had the authority he would not exclude any company from using the mails because of any violation of the Act pending the judicial determination of its validity by

this Court (AR. 58, NR. 60). These three steps taken by the Attorney General, the Postmaster General, and the Commission, as just described, had made it perfectly clear that, pending an adjudication by this Court on the Act, no company subject to the Act stood in any reasonable fear of any action or threat of action by any Government official.[5]

(7) To safeguard still further the rights of the respondents during the stay, the petitioners offered in the trial court to submit to a temporary injunction or interlocutory decree which would have the same effect during its pendency as a final decree. The Attorney General proposed that "*such temporary decree may take the same form and have the same scope as a final decree, and such temporary decree will not be vacated unless and until this Court is affirmatively satisfied that the decree is not warranted in fact or in law*" (Attorney General's reply brief in the trial court, p. 3). Such a temporary decree would give the plaintiffs in the trial court all that they could hope to obtain from a permanent decree of that court in their favor (see pp. 36–37, *infra*).

[5] This Court has recognized that a disclaimer by enforcement officials of any intention to institute prosecutions under a statute pending an adjudication of its validity may remove the necessity for the intervention of a court of equity. *Spielman Motor Co.* v. *Dodge*, 295 U. S. 89.

B. THE RESPONDENTS' POSITION BEFORE THE TRIAL COURT

(1) The respondents, and the other five plaintiffs in the trial court, opposed the Government's motion for a stay on the technical ground that, unless the parties and the issues in the suits stayed were identical with those in the suits upon which the stay was to be predicated, the court had no power to stay proceedings in the causes before it, or having such power could not exercise it without being guilty of an abuse of discretion.

In support of their contention that the issues in the Bond and Share suits were not identical with the issues in their suits, respondents relied upon the fact that the Government's suits against the Bond and Share companies sought only to require registration under the Act. Despite the fact that all seven plaintiffs in the trial court had alleged in their pleadings that provisions of the Act were inseparable and void as an entirety (AR. 17, NR. 24), all such companies assumed at the hearing that the provisions of the Act were separable and that the Bond and Share suits would determine only the validity of the registration provisions of the Act (AR. 34, NR. 35). In reply the Government pointed out that if the provisions of the Act were inseparable as the holding companies had asserted in their pleadings, the Bond and Share cases would necessarily determine the validity of the whole Act; and that if the provisions of the Act were sep-

arable, as the holding companies assumed for the purposes of the motion for the stay, the cross-bill of the Bond and Share defendants would raise the validity of the entire Act in the same manner and to the same extent as the respondents had attempted to do in their suits. If the validity of the Act or any part thereof could be raised by non-registered companies in actions against non-threatening Government officials, it was clear from the first that the Bond and Share companies would raise it.

(2) It was further contended by the respondents that an adjudication that the Act was constitutional as to Bond and Share would not determine the constitutionality of the Act as to them because their position was wholly different from that of Bond and Share in that (1) the respondents did not transmit a substantial amount of energy in interstate commerce; (2) that they had no intercompany service contracts the performance of which might be interstate commerce; and (3) that they did not actually control their subsidiaries, through service contracts or otherwise, except by exercising their voting rights as stockholders. In reply the Government pointed out that all three of the above contentions were being asserted by one or more of the several defendants in the Bond and Share suits, and that the respondents' own pleadings as well as the House Interstate Commerce Committee Report (reference to which report in

this petition was made in the briefs of the petitioners in both lower courts and appear in the Record in the affidavit of the Attorney General (AR. 47–52, NR. 49–54)) revealed conclusively that the respondents' situation in these respects was no different from that of one or more of the Bond and Share defendants.[6]

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[6] The respondents' pleadings and the House Interstate Commerce Committee Report revealed the following:

(*a*) *Interstate transmission of electric energy.*—Like the respondents, most of the defendants in the Bond and Share suits do not themselves transmit gas or electric energy in interstate commerce but do so through their subsidiary companies. To be specific, neither Bond and Share, American Gas and Electric, Electric Power and Light, American Power and Light, National Power and Light, United Gas Corporation, Power Securities Corporation, nor Lehigh Power Securities Corporation—each of which is severally a defendant in the Bond and Share suits—itself transmits gas or electric energy in interstate commerce, but does so through subsidiaries one or more steps removed from it. Both the absolute and relative amounts of such interstate transmission done by the subsidiaries of the various Bond and Share defendants vary greatly; in some of the Bond and Share Company systems the interstate transmission is greater than in respondents' systems, and in some it is less. House Interstate Commerce Committee Report, Part 3, p. 50 ff., 720 (AR. 50, NR. 52). The amounts of electric energy transmitted across state lines in both of the respondents' systems are very substantial, being in the case of North American about one-fifth of all the electric energy generated, and in the case of American Water Works nearly a fourth (AR. 50, NR. 52). Like respondents, the Bond and Share defendants allege that their operating subsidiaries are engaged primarily in the intrastate business of generating and distributing electric energy or producing and distributing gas solely within the states in which they

(3) Respondents asserted, too, that the stay would cause them "great and irreparable loss and damage" (AR. 38, NR. 40). In reply, the Government pointed out to the trial court that an unappealed permanent decree, just as a temporary decree, would have to yield to any subsequent decision of this Court, and respondents were unable

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operate and only incidentally, if at all, in interstate transmission (AR. 146, NR. 148).

(*b*) *Service Contracts.*—Only two of the Bond and Share defendants (Bond and Share itself, through its subsidiary Ebasco Services Incorporated, and one intermediate company, the American Gas and Electric Company) perform, or are alleged by the Government to perform, service, sales, and construction contracts for their subsidiaries. All the remaining Bond and Share defendants, including the other four intermediate holding companies (American Power and Light Company, National Power and Light Company, Electric Power and Light Corporation, and United Gas Corporation), all comparable in size to respondent companies, have no service contracts. The respondent American Water Works and Electric Company in its bill (AR. 6) affirmatively alleges it performs such service contracts for its subsidiaries. Furthermore, North American Light and Power Company, an intermediate holding company which is itself a wholly owned subsidiary of the respondent North American Company, maintains extensive intragroup service contracts and arrangements within its own sub-holding company system according to the House Interstate Commerce Committee Report, Part 3, p. 743 (AR. 51, NR. 53). Like respondents' contentions, the Bond and Share pleadings assert that "none of said services * * * constitute interstate commerce" (AR. 142, NR. 144).

(*c*) *Control of Subsidiaries.*—All defendants in the Bond and Share suits except the two companies with service contracts exercise control over their subsidiaries only through the exercise of voting rights attached to stock owner-

to answer the trial court's repeated question how, under these circumstances, respondents would be better protected by a permanent than a temporary decree (see pp. 36–37, *infra*).

(4) Respondents did not venture to assert that the time of the court should be taken up in the trials of even the seven suits already pending in

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ship. The Electric Bond and Share Company recently announced the virtual elimination of any interlocking of directors. The issue of control through ownership of voting securities is, therefore, exactly the same in the suits against the Bond and Share companies which have no service contracts as in respondents' suits. It must be noted, too, that non-controlling holding companies are entitled to exemption from the Act under section 2 (a) (7) and that both respondents allege that they are not entitled to such exemption (AR. 3–4, NR. 7–8), just as the Bond and Share companies have done (AR. 146, NR. 148).

The Government pointed out that the real fallacy in these alleged factual differences lay in the fact that the Government is proceeding not against Bond and Share Company alone but against a whole group of differently circumstanced holding companies, and is attempting to establish the duty of each such company to register as a holding company in its own right. If, as respondents averred in their petition for the allowance of the special appeal (AR. 255, NR. 251), the stayed suits, as well as the numerous suits brought against the petitioners in other districts, are substantially identical, it cannot be gainsaid that the Bond and Share suits include one or more suits which are substantially identical with the stayed suits.

Although the Government did not contend that a decision in the Bond and Share suits would, in the technical sense, be *res adjudicata* as to the local suits, it was and is the considered opinion of the Government that the Bond and Share suits would not only simplify the issues in the suits at bar but would as a practical matter dispose of them altogether.

the District. They admitted that all the suits brought to contest the validity of the Act were substantially identical (AR. 255–256, NR. 251–252). They offered to select for trial three or four test suits and to be content that a temporary injunction should protect other suitors pending the final determination of such test suits by this Court (AR. 253, NR. 249). But the Government pointed out that the respondents had failed to show that such suits would be as broad or as typical or as free from jurisdictional difficulties as the Bond and Share suits; and that the trial court could take cognizance of such suits pending in another district, there certainly being no necessity for a separate test suit in each district.

C. ACTION OF THE TRIAL COURT

The trial court found both the law and the facts against the respondents (AR. 40, NR. 42). It found that a court has power in its discretion to grant a stay in a pending case, not finally but temporarily, if conditioned upon safeguards adequately protecting the plaintiff during the period of the stay, for any cause which furthers the orderly processes of justice. It found that the circumstances surrounding these suits constituted such cause. It found that a decision by this Court in the Bond and Share suits, even if it did not dispose of all the questions involved, would afford a speedy adjudication of the validity of the

Act and would certainly narrow the issues and assist in the determination of the questions of law involved in the respondents' suits. It found that the plan proposed by the Government would give the respondents all the protection needed pending a decision by this Court and save a great deal of labor, time, and expense. It found in substance that the respondents' proposal to try only three or four of the suits filed in the lower court and to suspend proceedings in the others, did not offer the same assurance of orderly judicial procedure as did the suggestion of the Government; that the respondents could not answer for the forty cases in other districts which might be transferred to the District of Columbia if the stay were not granted. The trial court accordingly granted the stay and conditioned its grant upon a diligent and active prosecution of the Bond and Share suits. In view of the assurances of the petitioners, given before the filing of the suits and reiterated at the argument, the trial court did not believe a formal injunction necessary, but offered the respondents the right to that relief if they desired it. Neither of the respondents, nor the plaintiffs in the other suits below, have as yet sought to avail themselves of that right. The respondents approved as to form the decrees entered by the trial court (AR. 243, NR. 240).

D. ACTION OF THE COURT OF APPEALS

The Court of Appeals reversed the trial court on the ground that discretionary power of the trial court did not extend beyond "the determination of which of two cases, pending in the same court or in courts of similar jurisdiction and involving the same issues and the same parties, shall be first heard" (AR. 274, NR. 269). The prevailing opinion written by Justice Van Orsdel is rested upon the authority of two opinions of an inferior New York court; the authoritative decision of this Court in *Kansas City Southern Railway* v. *United States,* 282 U. S. 760, upon which the Government relied, is not distinguished or even mentioned in the prevailing or concurring opinion of the Court of Appeals. The prevailing opinion states "that many questions arise in the instant cases which would not and could not be disposed of in the Bond & Share case" (AR. 273, NR. 269); and the separate concurring opinion of Justice Groner states that "a decision in the one case will not foreclose all questions in the other" and that "the order entered by the lower court is not such a stay-order as a court ought ever to enter as a matter of discretion" (AR. 276, NR. 272). But there is nothing in either of the majority opinions which questions the findings of the lower court that "a decision by the Supreme Court in the Electric Bond and Share case, even if it should not dispose of all the ques-

tions involved, would certainly narrow the issues in the pending cases and assist in the determination of the questions of law involved" and "save great amount of labor, time, and expense" (AR. 43–44, NR. 45–46).

Justice Stephens, who dissented in the Court of Appeals, was of the opinion that the granting of a stay was a matter within the sound discretion of the trial court and was not limited by any technical rule of law. He found not simply that the trial court was guilty of no abuse of discretion but that its discretion had been properly and reasonably exercised. To the objection made by Justice Groner during the argument before the Court of Appeals and not assigned as error by the respondents that the stay was prematurely granted because the pleadings were not technically closed, Justice Stephens pointed out that the data, oral and documentary, in the records and briefs presented to the trial court served to inform the trial court of the nature and character of the litigation in question at least as fully as formal answers of the Government might have done. To the further objection made by the majority of the Court of Appeals that the stay was beyond the power of the trial court because it was "for an indefinite period of time" (AR. 274, NR. 269), Justice Stephens replied that the stay-order was granted "for a definite purpose and upon definite conditions" (AR. 281, NR. 277) and, being interlocutory in nature, remained within the control

of the trial court and would be subject to modification or vacation if the progress or want of progress of the Bond and Share suits required.

The majority of the Court of Appeals held that a temporary injunction was not adequate to protect the respondents from the damage which they alleged they suffered from the mere existence of the statute. But the majority did not point out in what manner a permanent decree of the court below in favor of the respondents, if not appealed by the Government, would more fully than a temporary decree protect the respondents as to the future regardless of the later rulings of this Court on the constitutionality of the Act.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In reversing the order of the Supreme Court of the District of Columbia staying proceedings in the suits before it to contest the validity of the Public Utility Holding Company Act, pending the final disposition of the Bond and Share suits.

2. In holding that the trial court was without discretionary power to stay its own proceedings in any suit, pending the final disposition of another suit, unless under the principles of *res adjudicata* the decision in the other suit would determine all questions in the suit stayed and the judgment in the other suit would dispose of the controversy in both suits.

3. In holding that the trial court was without discretionary power to stay its proceedings pending the final disposition of another suit before the pleadings in the suit before it were technically closed.

4. In holding that the temporary decree offered the respondents would not during its effectiveness protect the respondents as fully as a permanent decree in the trial court.

5. In holding that the trial court had exceeded its discretionary power in staying proceedings in the suits before it, pending the final disposition of the Bond and Share suits.

REASONS FOR GRANTING THE WRITS

(1) The Court of Appeals for the District of Columbia has decided a question of far-reaching public importance affecting procedure in the federal courts. The Court of Appeals has held that a federal court is without discretion to stay its own proceedings pending the final disposition of another suit involving similar issues of law and fact instituted in the same or another federal court. It has held, in effect, that power to grant such a stay does not exist unless the issues and parties in both suits are identical and the disposition of one suit will render the other *res adjudicata*. However wasteful of the time and labor of an already overburdened court trials of numerous cases involving substantially similar issues may be, the trial court is deprived of the right in the exercise

of its judicial discretion to control its own processes so as to promote the orderly and economical administration of justice.

The decision of the Court of Appeals obliges a lower court to proceed, either simultaneously, or in succession, with the trial of a multitude of similar suits brought for a common purpose, without permitting the lower court to await the outcome of an appeal to this Court in one suit which promises to eliminate the need of any further litigation or at least obviate the necessity of long and protracted trials and successive appeals. It prevents the trial court from adopting a procedure which will conserve much time, labor, and expense, even though such procedure is attended by appropriate safeguards calculated to protect the substantive rights of all litigants. The decision of the Court of Appeals makes it impossible for the Government, or any other defendant against whom substantially similar actions have been brought by different plaintiffs, to avoid preparing and trying a multiplicity of almost identical suits, although the trial of one fairly representative suit followed by an appeal to this Court would eliminate the burden and expense to the courts and to the litigants of a score of suits. It limits the control of the trial court over its own process by a fixed and arbitrary rule bearing no relation to the orderly and economical administration of justice.

(2) The decision of the Court of Appeals that the power of the trial court to stay a suit before

it pending the disposition of another suit is limited to suits "involving the same issues and the same parties" (AR. 274, NR. 269) is in direct conflict with the authoritative decisions of this Court. While it is true that one of the most frequent uses of the stay has been to prevent a multiplicity of suits between the same parties in respect of the same issues, the decisions of this Court demonstrate that there is no narrow technical rule that the issues and parties must be identical in all respects in each suit in order that the proceedings in one suit may be stayed or postponed until after the disposition of another suit. Even when an independent bill is brought seeking affirmative relief in equity to enjoin a multiplicity of suits, there is no rigid rule that the parties or issues must be identical. *Di Giovanni* v. *Camden Ins. Assn.,* 296 U. S. 64, 70. The power of a court to grant a stay of a suit before it pending the outcome of another suit is an incident of a court's "inherent power to control the progress of the cause so as to maintain the orderly processes of justice." *Enelow* v. *New York Life Insurance Co.,* 293 U. S. 379, 381, 382.

In *Kansas City Southern Railway* v. *United States,* 282 U. S. 760, this Court clearly indicated that the use of the stay, by a court in respect of its own proceedings (as distinguished from affirmative relief against proceedings in another court), to prevent needless multiplicity of suits by *differ-*

ent parties against the Government, pending the final disposition of a suit begun in another district, rests in the sound discretion of the trial court. There Mr. Chief Justice Hughes stated (282 U. S. at 763–764):

> *We find no provision of the applicable statutes which deprives a District Court of jurisdiction of a suit brought by a party entitled to attack an order of the Interstate Commerce Commission in accordance with these provisions as to venue. But the existence of jurisdiction does not mean that it must be exercised and that grounds may not be shown for staying the hand of the Court.* Compare *Langnes* v. *Green, ante,* p. 531. The appellants, upon proper application could have been allowed to intervene in the earlier suit brought for the same purpose in the District Court for the Western District of Kentucky (U. S. C., Tit. 28, Sec. 45a) and could have presented there all of their grounds of attack upon the orders in question. The orders of the Interstate Commerce Commission may apply throughout the country, and there may be cases where the convenience of the parties and the interests of justice may make appropriate separate suits by different parties affected by the same order. *The question is thus one for the sound discretion of the District Court, in which such a suit is brought, to determine whether it should be permitted to continue or proceedings therein should be*

> *stayed, pending the final outcome of an earlier suit for the same purpose, to the end that there may not be a multiplicity of suits without substantial reason.* As, however, the defendants here did not raise the question of the pendency of the earlier suit until the day of final hearing, several months after the suit was begun, we see no reason for disturbing the action of the District Court in this respect. (Italics supplied.)

The order of the Interstate Commerce Commission attacked in the *Kansas City Southern* case affected many different railroads and was thus similar in its effect to the Holding Company Act, which affects many different utility holding companies. The incidence of the same order of the Interstate Commerce Commission upon one railroad may be quite different from its incidence upon another railroad differently circumstanced. Yet there can be no question, since the *Kansas City Southern* case, that a suit in one court contesting the validity of an order of the Interstate Commerce Commission may, in the discretion of that court, be stayed pending the final disposition of another suit begun in a different court by a different plaintiff to contest the validity of the same order as applied to it.[7]

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[7] In *Friedman* v. *Harrington*, 56 Fed. 860 (C. C. Mass. 1893), the circuit court for Massachusetts was asked to stay a suit before it under circumstances almost identical with those which confronted the trial court in these proceedings. In the *Friedman* case, the plaintiffs sued state officers to restrain the enforcement of a statute designed to limit, if

In the recent case of *Pennsylvania* v. *Williams*, 294 U. S. 176, this Court went so far as to emphasize that a refusal by a trial court to stay its own hand will constitute an abuse of discretion if such refusal would be prejudicial to the public interest. Mr. Justice Stone stated (294 U. S. at 185):

> *A court of equity, which in its discretion may refuse to protect private rights when the exercise of its jurisdiction would be prejudicial to the public interest,* see *United States ex rel. Greathouse* v. *Dern*, 289 U. S. 352, 359, 360, or deny relief upon perform-

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not completely abolish, the oleomargarine trade in the state. The plaintiffs were wholesale dealers in oleomargarine, sold only in the original packages in which they were brought into the state. The statement was made by the attorney general representing the defendants, and not denied by the plaintiffs, that no prosecution had been brought under the law against a dealer in the original packages and it was not proposed to bring any, until the constitutionality of the law had been passed upon by the Supreme Court in certain test cases. The circuit court stayed the case on the ground that two similar suits, testing the statute as applied to the business of *other* plaintiffs, were pending before the Supreme Court. The court stated that "as this question can only be settled by a decision of the supreme court, I must decline to pass upon the question at this time, and direct that the case be continued until the next term of this court" (56 Fed. at 861). The court stressed the point that the stay could not hurt the plaintiffs because the state officials did not propose to enforce the law against sales in the original package until the constitutionality of the Act was settled—a situation exactly analogous to the announced intentions of the Government in respect of the enforcement of the Holding Company Act during the pendency of the Bond and Share suits.

> ance of a condition which will safeguard the public interest and secure substantial justice to the complainant, see *Harrisonville* v. *W. S. Dickey Clay Mfg. Co.*, 289 U. S. 334, 338, *would seem bound to stay its hand in the public interest, where it reasonably appears that the private right will not suffer.* (Italics supplied.)

The words of Mr. Justice Stone are particularly applicable to the present suits, where the interlocutory decree offered the respondents ensures that their private rights will not suffer. See also *Gordon* v. *Ominsky*, 294 U. S. 186; *Penn General Casualty Co.* v. *Pennsylvania*, 294 U. S. 189.

The prevailing opinion of the Court of Appeals passed over these authoritative decisions of this Court and relied on language plucked from two opinions of an inferior New York court, which announce the rule that a trial court under New York practice is without power to grant a stay-order pending the final disposition of another suit unless the issues and parties are so identical that a final judgment in the one suit will render the other *res adjudicata*.[8] Whether the pleadings have or have

[8] *Rosenberg* v. *Slotchin*, 181 App. Div. 137 (N. Y. 1917), was a case where the court's denial of stay could clearly have been justified as a proper exercise of discretion. Almost simultaneously two parties to a contract brought suit against each other in different counties, each claiming the other had broken the contract by refusing to perform. The court's refusal to stay the suit in question was simply a refusal to help either one of the two parties, each of whom

not been closed, whether any of the parties will or will not suffer material injury by the stay, the decision of the Court of Appeals, if not modified, will deprive the Supreme Court of the District of Columbia of all power and discretion to control its own calendar to prevent numerous trials involving similar issues of law and fact whenever all the parties are not technically identical.

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was jockeying for a particular county for the trial. No particular equity was shown by either party. The court correctly maintained the *status quo*.

Jenkins v. *Baker*, 91 App. Div. 400 (N. Y. 1904), involved the right of a husband to certain funds of the estate of his deceased wife, asserted by him in a suit against the executors. These funds were alleged to be due him under a trust which his wife had set up in a savings account, she having later withdrawn the funds and given half to a daughter, one of the executors under her will (see 72 N. Y. Supp. 546). A prior suit by the husband against the daughter individually was pending on appeal, and on this ground the lower court in the second suit granted a stay. On appeal from the order granting the stay, judgment was reversed. There was no multiplicity of suits against the daughter, for the second suit was not against the daughter individually but as executor. And the New York court ruled that a stay should not have been granted because the court found that "whatever disposition may be made of the first case, this one must still be *tried*." No such situation confronts this Court. As has been pointed out, the trial of the present suits may be entirely obviated, and will at the very least be greatly limited and simplified, by the decision in the Bond and Share cases.

(3) The prevailing opinions of the Court of Appeals are in direct conflict with the holding of this Court in *Kansas City Southern Railway* v. *United States,* 282 U. S. 760, in so far as such opinions suggest that the stay was improvidently granted because it was "for an indefinite period of time" (AR. 274, NR. 269). Justic Groner, in his concurring opinion, dwells particularly upon the "indefinite" character of the stay. He expressly states that "the order entered by the lower court is not such a stay-order as a court ought ever to enter as a matter of discretion" and that the stay-order was not "temporary" but for an "indefinite period," and was therefore "substantially an injunction against these plaintiffs" (AR. 276–277, NR. 272). The very type of stay-order which Justice Groner found defective, Mr. Chief Justice Hughes expressly held to be proper in the *Kansas City Southern* case—i. e., a stay "pending the final outcome" of another suit. The stay, being interlocutory, is at all times within the control of the trial court to vacate or revise for any good cause (*Perkins* v. *Fourniquet,* 6 How. 206, 209, *Fourniquet* v. *Perkins,* 16 How. 82, 85), and its indefiniteness, if there be any, is an indefiniteness dictated by the vigilance of the trial court to stand ready at all times to alter or vacate the stay as justice may require, to adjust its decree to the exigencies of the situation, and to protect the interests of the litigants to the fullest extent.

(4) The holding of the Court of Appeals that the trial court is without power to grant a stay in a suit before it before the pleadings are technically closed, finds no support in the decisions of this Court and is contrary to sound equity practice.

More than forty suits with issues similar to those here involved had been brought in various courts. The detailed allegations of each of these numerous long and complicated bills, in so far as they related to the particular holding-company system of each plaintiff, could not have been intelligently answered and countered by cross-bills by the Government without careful and long investigation and study. Hasty answers to these bills could have been no more than general denials and the drafting of adequate cross-bills would have entailed considerable time and labor. Indeed, had the Government asked for time to investigate the facts in order to frame its answers and cross-bills before requesting the stay, it might have later been met with the objection which was decisive in the *Kansas City Southern* case, *supra*—to wit, that the stay had not been seasonably requested. Far from being premature in its motion for a stay, the Government carefully followed the procedure indicated by this Court in the authorities on which the Government relied.

Moreover, the Government carefully explained to both the trial and appellate courts the issues which would be raised in respondents' suits, and

referred both courts to carefully prepared governmental reports and documents to indicate that the issues discussed by the Government were put forward in good faith and were not merely contentious. The issues were more fully detailed and explained to the trial court in the Government's arguments and briefs than would have been possible in any formal pleading. (See pp. 14–18, *supra*.)

(5) The majority of the Court of Appeals did not review the discretion which the trial court exercised. It is true that there are suggestions in the prevailing opinions reflecting upon the propriety of the trial court's exercising its discretion in the present cases in favor of a stay; but the majority did not actually review the circumstances which influenced the trial court's discretion, because under their view of the law such circumstances were irrelevant. The majority simply found that the discretion of the trial court did not extend to the granting of a stay pending the final disposition of another suit where the parties and issues are not technically identical. Neither of the prevailing opinions in the Court of Appeals questioned the finding of the trial court that "a decision by the Supreme Court in the Electric Bond and Share case, even if it should not dispose of all the questions involved, would certainly narrow the issues in the pending cases and assist in the determination of the questions of law involved" (AR. 43, NR. 45).

(6) The decision of the Court of Appeals proceeded on the assumption that it was necessary to the protection of the rights of each company affected by the Act to have its suits tried before a comprehensive test suit had been disposed of on appeal by this Court. If the Court of Appeals were correct in holding that respondents could not be adequately protected by a temporary injunction pending the disposition of the Bond and Share suits, it would follow that other suitors could not adequately be protected by a temporary injunction pending the disposition of the respondents' suits. Yet respondents did not urge that it was necessary or even desirable that all the suits against the petitioners should be tried. Counsel for the respondents stated to the trial court: "I undertake to say that it will not be difficult for us [presumably himself and Government counsel] to agree upon a group of three or four cases which will present every question that is involved in this multitude of suits, so that every one of these companies may be satisfied that its rights will be promptly determined" (AR. 253, NR. 249). But once it is recognized that the rights of other suitors may be adequately protected by temporary injunctions pending the final disposition of appropriate test suits, the Government submits that the rights of such suitors including the respondents may similarly be adequately protected pending the final disposition of the Bond and Share suits. The sole question is whether the Bond and Share suits are

fair and comprehensive test suits; that question the majority of the Court of Appeals did not even consider.

(7) Neither of the prevailing opinions in the Court of Appeals pointed out in what respect a stay, coupled with a temporary injunction, would expose the respondents to any damage from which a permanent decree of the trial court could protect them. A permanent decree of the trial court, just as an interlocutory decree, would have to yield to the law as subsequently declared by this Court in other cases. If the respondents obtained a final decree from the trial court, they could not appeal from a decree in their favor. Yet such a final decree would not protect the respondents in the event that subsequent decisions of this Court in other cases should establish that the decree had been based upon a rule of law different from that announced by this Court. The power to dissolve or modify a continuing decree—whether it be permanent or interlocutory—in so far as it relates to future acts, after the conditions on which it was based are altered by the decisions of this Court declaring the law applicable to such situations, is "inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need." *United States* v. *Swift & Co.*, 286 U. S. 106, 114; *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 18 How. 421, 431–432; cf.

Hatch v. *Wallamet Iron Bridge Co.*, 27 Fed. 673 (C. C. Ore. 1886).

So far as a decree of a court of equity is valuable to the respondents for its own sake, a temporary injunction or interlocutory decree will have the same effect during its pendency as a final decree. The respondents have not sued, nor can they sue the United States. They have brought these proceedings not against the Act but against the petitioners. And a temporary decree will certainly give them the same protection against the petitioners as would a final decree. The petitioners have offered to submit to a temporary decree which would have the same form and scope as a final decree. As the Attorney General stated on page 3 of his reply brief in the trial court: "Such temporary decree may take the same form and have the same scope as a final decree, and such temporary decree will not be vacated unless and until this Court is affirmatively satisfied that the decree is not warranted in fact or in law."

(8) Although the opinion of this Court in *Kansas City Southern Railway* v. *United States*, 282 U. S. 760, as has been pointed out, bears directly on some phases of the instant proceedings, this Court has not had occasion to define with the requisite precision the limits of the power of a trial court to control its own processes to promote the orderly and economical administration of justice. Whatever may be the limits upon the power of one federal

court to grant a stay pending the final outcome of another suit in the same or another federal court, such limits ought to be clearly defined by this Court, and not based upon the dicta of an inferior state court. The question of the power of the trial court to grant a stay and the question of the principles which should guide a trial court in exercising such discretion as it may have are vital questions transcending in importance even the significant public interests immediately involved in the present suits.

This Court certainly has never sanctioned a rule of federal procedure which makes it impossible for a trial court, particularly a court of equity, to stay its own proceedings if it has reason to believe that by so doing it will, without substantial hurt or prejudice to the parties, obviate the need of fruitless and burdensome litigation. The tenor of this Court's decisions suggests that questions of the choice of a proper forum, the avoidance of a multiplicity of suits, identity of parties and issues, order of trial of related issues, in so far as they bear upon the granting of a stay, are not matters of rule but of judgment. But irrespective of what may be the ultimate decision of this Court upon the particular procedure herein suggested, it is of genuine importance that this Court should define for the guidance of the federal courts the appropriate limits of a trial court's power and discretion in granting a stay.

CONCLUSION

Because of the importance of the questions presented and because of the failure of the majority of the Court of Appeals to give proper effect to the applicable decisions of this Court, it is respectfully submitted that this petition should be granted.

STANLEY REED,
Solicitor General.

JULY 1936.

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[PUBLIC—No. 333—74TH CONGRESS]

[S. 2796]

AN ACT

To provide for control and regulation of public-utility holding companies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Utility Act of 1935".

TITLE I—CONTROL OF PUBLIC-UTILITY HOLDING COMPANIES

NECESSITY FOR CONTROL OF HOLDING COMPANIES

SECTION 1. (a) Public-utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things, (1) their securities are widely marketed and distributed by means of the mails and instrumentalities of interstate commerce and are sold to a large number of investors in different States; (2) their service, sales, construction, and other contracts and arrangements are often made and performed by means of the mails and instrumentalities of interstate commerce; (3) their subsidiary public-utility companies often sell and transport gas and electric energy by the use of means and instrumentalities of interstate commerce; (4) their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage; (5) their activities extending over many States are not susceptible of effective control by any State and make difficult, if not impossible, effective State regulation of public-utility companies.

(b) Upon the basis of facts disclosed by the reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session), the reports of the Committee on Interstate and Foreign Commerce, House of Representatives, made pursuant to H. Res. 59 (Seventy-second Congress, first session) and H. J. Res. 572 (Seventy-second Congress, second session) and otherwise disclosed and ascertained, it is hereby declared that the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers of electric energy and natural and manufactured gas, are or may be adversely affected—

(1) when such investors cannot obtain the information necessary to appraise the financial position or earning power of the issuers, because of the absence of uniform standard accounts; when such securities are issued without the approval or consent of the States having jurisdiction over subsidiary public-utility companies; when such securities are issued upon the basis of fictitious or unsound asset values having no fair relation to the sums invested

in or the earning capacity of the properties and upon the basis of paper profits from intercompany transactions, or in anticipation of excessive revenues from subsidiary public-utility companies; when such securities are issued by a subsidiary public-utility company under circumstances which subject such company to the burden of supporting an overcapitalized structure and tend to prevent voluntary rate reductions;

(2) when subsidiary public-utility companies are subjected to excessive charges for services, construction work, equipment, and materials, or enter into transactions in which evils result from an absence of arm's-length bargaining or from restraint of free and independent competition; when service, management, construction, and other contracts involve the allocation of charges among subsidiary public-utility companies in different States so as to present problems of regulation which cannot be dealt with effectively by the States;

(3) when control of subsidiary public-utility companies affects the accounting practices and rate, dividend, and other policies of such companies so as to complicate and obstruct State regulation of such companies, or when control of such companies is exerted through disproportionately small investment;

(4) when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties; or

(5) when in any other respect there is lack of economy of management and operation of public-utility companies or lack of efficiency and adequacy of service rendered by such companies, or lack of effective public regulation, or lack of economies in the raising of capital.

(c) When abuses of the character above enumerated become persistent and wide-spread the holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title.

DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(1) "Person" means an individual or company.

(2) "Company" means a corporation, a partnership, an association, a joint-stock company, a business trust, or an organized group of persons, whether incorporated or not; or any receiver, trustee, or other liquidating agent of any of the foregoing in his capacity as such.

(3) "Electric utility company" means any company which owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale, other than sale to tenants or employees of the company operating such facilities for their own use and not for resale. The Commission, upon application, shall by order declare a company operating any such facilities not to be an electric utility company if the Commission finds that (A) such company is primarily engaged in one or more businesses other than the business of an electric utility company, and by reason of the small amount of electric energy sold by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered an electric utility company for the purposes of this title, or (B) such company is one operating within a single State, and substantially all of its outstanding securities are owned directly or indirectly by another company to which such operating company sells or furnishes electric energy which it generates; such other company uses and does not resell such electric energy, is engaged primarily in manufacturing (other than the manufacturing of electric energy or gas) and is not controlled by any other company; and by reason of the small amount of electric energy sold or furnished by such operating company to other persons it is not necessary in the public interest or for the protection of investors or consumers that it be considered an electric utility company for the purposes of this title. The filing of an application hereunder in good faith shall exempt such company (and the owner of the facilities operated by such company) from the application of this paragraph until the Commission has acted upon such application. As a condition to the entry of any such order, and as a part thereof, the Commission may require application to be made periodically for a renewal of such order, and may require the filing of such periodic or special reports regarding the business of the company as the Commission may find necessary or appropriate to insure that such company continues to be entitled to such exemption during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke such order whenever it finds that the conditions specified in clause (A) or (B) are not satisfied in the case of such company. Any action of the Commission under the preceding sentence shall be by order. Application under this paragraph may be made by the company in respect of which the order is to be issued or by the owner of the facilities operated by such company. Any order issued under this paragraph shall apply equally to such company and such owner. The Commission may by rules or regulations conditionally or unconditionally provide that any specified class or classes of companies which it determines to satisfy the conditions specified in clause (A) or (B), and the owners of the facilities operated by such companies, shall not be deemed electric utility companies within the meaning of this paragraph.

(4) "Gas utility company" means any company which owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for

heat, light, or power. The Commission, upon application, shall by order declare a company operating any such facilities not to be a gas utility company if the Commission finds that (A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered a gas utility company for the purposes of this title. The filing of an application hereunder in good faith shall exempt such company (and the owner of the facilities operated by such company) from the application of this paragraph until the Commission has acted upon such application. As a condition to the entry of any such order, and as a part thereof, the Commission may require application to be made periodically for a renewal of such order, and may require the filing of such periodic or special reports regarding the business of the company as the Commission may find necessary or appropriate to insure that such company continues to be entitled to such exemption during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke such order whenever it finds that the conditions specified in clauses (A) and (B) are not satisfied in the case of such company. Any action of the Commission under the preceding sentence shall be by order. Application under this paragraph may be made by the company in respect of which the order is to be issued or by the owner of the facilities operated by such company. Any order issued under this paragraph shall apply equally to such company and such owner. The Commission may by rules or regulations conditionally or unconditionally provide that any specified class or classes of companies which it determines to satisfy the conditions specified in clauses (A) and (B), and the owners of the facilities operated by such companies, shall not be deemed gas utility companies within the meaning of this paragraph.

(5) "Public-utility company" means an electric utility company or a gas utility company.

(6) "Commission" means the Securities and Exchange Commission.

(7) "Holding company" means—

(A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a holding company; and

(B) any person which the Commission determines, after notice and opportunity for hearing, directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon holding companies.

The Commission, upon application, shall by order declare that a company is not a holding company under clause (A) if the Commission finds that the applicant (i) does not, either alone or pursuant to an arrangement or understanding with one or more other persons, directly or indirectly control a public-utility or holding company either through one or more intermediary persons or by any means or device whatsoever, (ii) is not an intermediary company through which such control is exercised, and (iii) does not, directly or indirectly, exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon holding companies. The filing of an application hereunder in good faith by a company other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a holding company, until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of any order granting such application and as a part of any such order, the Commission may require the applicant to apply periodically for a renewal of such order and to do or refrain from doing such acts or things, in respect of exercise of voting rights, control over proxies, designation of officers and directors, existence of interlocking officers, directors and other relationships, and submission of periodic or special reports regarding affiliations or intercorporate relationships of the applicant, as the Commission may find necessary or appropriate to ensure that in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application of the company affected, shall revoke the order declaring such company not to be a holding company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order.

(8) "Subsidiary company" of a specified holding company means—

(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B)), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be

subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies.

The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of, and as a part of, any order granting such application, the Commission may require the applicant to apply periodically for a renewal of such order and to file such periodic or special reports regarding the affiliations or intercorporate relationships of the applicant as the Commission may find necessary or appropriate to enable it to determine whether in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke the order declaring such company not to be a subsidiary company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order. Any application under this paragraph may be made by the holding company or the company in respect of which the order is to be entered, but as used in this paragraph the term "applicant" means only the company in respect of which the order is to be entered.

(9) "Holding-company system" means any holding company, together with all its subsidiary companies, and all mutual service

companies (as defined in paragraph (13) of this subsection) of which such holding company or any subsidiary company thereof is a member company (as defined in paragraph (14) of this subsection).

(10) "Associate company" of a company means any company in the same holding-company system with such company.

(11) "Affiliate" of a specified company means—

(A) any person that directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of such specified company;

(B) any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by such specified company;

(C) any individual who is an officer or director of such specified company, or of any company which is an affiliate thereof under clause (A) of this paragraph; and

(D) any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to such specified company that there is liable to be such an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon affiliates of a company.

(12) "Registered holding company" means a person whose registration is in effect under section 5.

(13) "Mutual service company" means a company approved as a mutual service company under section 13.

(14) "Member company" means a company which is a member of an association or group of companies mutually served by a mutual service company.

(15) "Director" means any director of a corporation or any individual who performs similar functions in respect of any company.

(16) "Security" means any note, draft, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, receiver's or trustee's certificate, or, in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of liability on, or warrant or right to subscribe to or purchase, any of the foregoing.

(17) "Voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company, or any security issued under or pursuant to any trust, agreement, or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a company; and a specified per centum of the outstanding voting securities of a company means such amount of the outstanding voting securities of such company as entitles the holder or holders

thereof to cast said specified per centum of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast in the direction or management of the affairs of such company.

(18) "Utility assets" means the facilities, in place, of any electric utility company or gas utility company for the production, transmission, transportation, or distribution of electric energy or natural or manufactured gas.

(19) "Service contract" means any contract, agreement, or understanding whereby a person undertakes to sell or furnish, for a charge, any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service, information, or data.

(20) "Sales contract" means any contract, agreement, or understanding whereby a person undertakes to sell, lease, or furnish, for a charge, any goods, equipment, materials, supplies, appliances, or similar property. As used in this paragraph the term "property" does not include electric energy or natural or manufactured gas.

(21) "Construction contract" means any contract, agreement, or understanding for the construction, extension, improvement, maintenance, or repair of the facilities or any part thereof of a company for a charge.

(22) "Buy", "acquire", "acquisition", or "purchase" includes any purchase, acquisition by lease, exchange, merger, consolidation, or other acquisition.

(23) "Sale" or "sell" includes any sale, disposition by lease, exchange or pledge, or other disposition.

(24) "State" means any State of the United States or the District of Columbia.

(25) "United States", when used in a geographical sense, means the States.

(26) "State commission" means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State which under the law of such State has jurisdiction to regulate public-utility companies.

(27) "State securities commission" means any commission, board, agency, or officer, by whatever name designated, other than a State commission as defined in paragraph (26) of this subsection, which under the law of a State has jurisdiction to regulate, approve, or control the issue or sale of a security by a company.

(28) "Interstate commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(29) "Integrated public-utility system" means—

(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the

area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and

(B) As applied to gas utility companies, a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation: *Provided*, That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region.

(b) No person shall be deemed to be a holding company under clause (B) of paragraph (7) of subsection (a), or a subsidiary company under clause (B) of paragraph (8) of such subsection, or an affiliate under clause (D) of paragraph (11) of such subsection, unless the Commission, after appropriate notice and opportunity for hearing, has issued an order declaring such person to be a holding company, a subsidiary company, or an affiliate, or declaring a class of which such person is a member to be affiliates. Such an order shall not become effective for at least thirty days after the mailing of a copy thereof to the person thereby declared to be a holding company, subsidiary company, or affiliate; or, in the case of determination of affiliates by classes, until at least thirty days after appropriate publication thereof in such manner as the Commission shall determine. Whenever the Commission, on its own motion or upon application by the person declared to be a holding company, subsidiary company, or affiliate, finds that the circumstances which gave rise to the issuance of any such order no longer exist, the Commission shall by order revoke such order.

(c) No provision in this title shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

POWER TO MAKE PARTICULAR EXEMPTIONS REGARDING HOLDING COMPANIES, SUBSIDIARY COMPANIES, AND AFFILIATES

SEC. 3. (a) The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this title, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—

(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its

income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;

(3) such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public-utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company;

(4) such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities; or

(5) such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.

(b) The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any subsidiary company, as such, of a holding company from any provision or provisions of this title, the application of which to such subsidiary company the Commission finds is not necessary in the public interest or for the protection of investors, if such subsidiary company derives no material part of its income, directly or indirectly, from sources within the United States, and neither it nor any of its subsidiary companies is a public-utility company operating in the United States.

(c) Within a reasonable time after the receipt of an application for exemption under subsection (a) or (b), the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application. The filing of an application in good faith under subsection (a) by a person other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a holding company until the Commission has acted upon such application. The filing of an application in good faith under subsection (b) shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company until the Commission has acted upon such application. Whenever the Commission, on its own motion, or upon application by the holding company or any subsidiary company thereof exempted by any order issued under subsection (a), or by the subsidiary company exempted by any order issued under subsection (b), finds that the circumstances which gave rise to the issuance of such order no longer exist, the Commission shall by order revoke such order.

(d) The Commission may, by rules and regulations, conditionally or unconditionally exempt any specified class or classes of persons from the obligations, duties, or liabilities imposed upon such persons as subsidiary companies or affiliates under any provision or provisions of this title, and may provide within the extent of any such exemption that such specified class or classes of persons shall not be deemed subsidiary companies or affiliates within the meaning of any such provision or provisions, if and to the extent that it deems the exemption necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of this title.

TRANSACTIONS BY UNREGISTERED HOLDING COMPANIES

SEC. 4. (a) After December 1, 1935, unless a holding company is registered under section 5, it shall be unlawful for such holding company, directly or indirectly—

(1) to sell, transport, transmit, or distribute, or own or operate any utility assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce;

(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

(5) to engage in any business in interstate commerce; or

(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5), inclusive, of this subsection.

(b) Every holding company which has outstanding any security any of which, by use of the mails or any means or instrumentality of interstate commerce, has been distributed or made the subject of a public offering subsequent to January 1, 1925, and any of which security is owned or held on October 1, 1935 (or, if such company is not a holding company on that date, on the date such company becomes a holding company) by persons not resident in the State in which such holding company is organized, shall register under section 5 on or before December 1, 1935 or the thirtieth day after such company becomes a holding company, whichever date is later.

REGISTRATION OF HOLDING COMPANIES

SEC. 5. (a) On or at any time after October 1, 1935, any holding company or any person purposing to become a holding company may register by filing with the Commission a notification of registration, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. A person shall be deemed to be registered upon receipt by the Commission of such notification of registration.

(b) It shall be the duty of every registered holding company to file with the Commission, within such reasonable time after registration as the Commission shall fix by rules and regulations or order, a registration statement in such form as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such registration statement shall include—

(1) such copies of the charter or articles of incorporation, partnership, or agreement, with all amendments thereto, and the bylaws, trust indentures, mortgages, underwriting arrangements, voting-trust agreements, and similar documents, by whatever name known, of or relating to the registrant or any of its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers;

(2) such information in such form and in such detail relating to, and copies of such documents of or relating to, the registrant and its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

(A) the organization and financial structure of such companies and the nature of their business;

(B) the terms, position, rights, and privileges of the different classes of their securities outstanding;

(C) the terms and underwriting arrangements under which their securities, during not more than the five preceding years, have been offered to the public or otherwise disposed of and the relations of underwriters to, and their interest in, such companies;

(D) the directors and officers of such companies, their remuneration, their interest in the securities of, their material contracts with, and their borrowings from, any of such companies;

(E) bonus and profit-sharing arrangements;

(F) material contracts, not made in the ordinary course of business, and service, sales, and construction contracts;

(G) options in respect of securities;

(H) balance sheets for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(I) profit and loss statements for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(3) such further information or documents regarding the registrant or its associate companies or the relations between them as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

(c) The Commission by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors or consumers, may permit a registrant to file a preliminary registration statement without complying with the provisions of subsection (b); but every registrant shall file a complete registration statement with the Commission within such reasonable period of time as the Commission shall fix by rules and regulations or order, but not later than one year after the date of registration.

(d) Whenever the Commission, upon application, finds that a registered holding company has ceased to be a holding company, it shall so declare by order and upon the taking effect of such order the registration of such company shall, upon such terms and conditions as the Commission finds and in such order prescribes as necessary for the protection of investors, cease to be in effect. The denial of any such application by the Commission shall be by order.

UNLAWFUL SECURITY TRANSACTIONS BY REGISTERED HOLDING AND SUBSIDIARY COMPANIES

SEC. 6. (a) Except in accordance with a declaration effective under section 7 and with the order under such section permitting such declaration to become effective, it shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly (1) to issue or sell any security of such company; or (2) to exercise any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security of such company.

(b) The provisions of subsection (a) shall not apply to the issue, renewal, or guaranty by a registered holding company or subsidiary company thereof of a note or draft (including the pledge of any security as collateral therefor) if such note or draft (1) is not part of a public offering, (2) matures or is renewed for not more than nine months, exclusive of days of grace, after the date of such issue, renewal, or guaranty thereof, and (3) aggregates (together with all other then outstanding notes and drafts of a maturity of nine months or less, exclusive of days of grace, as to which such company is primarily or secondarily liable) not more than 5 per centum of the principal amount and par value of the other securities of such company then outstanding, or such greater per centum thereof as the Commission upon application may by order authorize as necessary or appropriate in the public interest or for the protection of investors or consumers. In the case of securities having no principal amount or no par value, the value for the purposes of this subsection shall be the fair market value as of the date of issue. The Commission by rules and regulations or order, subject to such terms and conditions as it deems appropriate in the public interest or for the protection of investors or consumers, shall exempt from

the provisions of subsection (a) the issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business, or if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company when such subsidiary company is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public utility company, or an investment company. The provisions of subsection (a) shall not apply to the issue, by a registered holding company or subsidiary company thereof, of a security issued pursuant to the terms of any security outstanding on January 1, 1935, giving the holder of such outstanding security the right to convert such outstanding security into another security of the same issuer or of another person, or giving the right to subscribe to another security of the same issuer or another issuer. Within ten days after any issue, sale, renewal, or guaranty exempted from the application of subsection (a) by or under authority of this subsection, such holding company or subsidiary company thereof shall file with the Commission a certificate of notification in such form and setting forth such of the information required in a declaration under section 7 as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

(c) It shall be unlawful, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, for any registered holding company or any subsidiary company thereof, directly or indirectly,—

(1) to sell or offer for sale or to cause to be sold or offered for sale, from house to house, any security of such holding company; or

(2) to cause any officer or employee of any subsidiary company of such holding company to sell or cause to be sold any security of such holding company.

As used in this subsection the term "house" shall not include an office used for business purposes.

DECLARATIONS BY REGISTERED HOLDING AND SUBSIDIARY COMPANIES IN RESPECT OF SECURITY TRANSACTIONS

SEC. 7. (a) A registered holding company or subsidiary company thereof may file a declaration with the Commission, regarding any of the acts enumerated in subsection (a) of section 6, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such declaration shall include—

(1) such of the information and documents which are required to be filed in order to register a security under section 7 of the Securities Act of 1933, as amended, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers; and

(2) such additional information, in such form and detail, and such documents regarding the declarant or any associate company thereof, the particular security and compliance with such State laws as may apply to the act in question as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

(b) A declaration filed under this section shall become effective within such reasonable period of time after the filing thereof as the Commission shall fix by rules and regulations or order, unless the Commission prior to the expiration of such period shall have issued an order to the declarant to show cause why such declaration should become effective. Within a reasonable time after an opportunity for hearing upon an order to show cause under this subsection, unless the declarant shall withdraw its declaration, the Commission shall enter an order either permitting such declaration to become effective as filed or amended, or refusing to permit such declaration to become effective. Amendments to a declaration may be made upon such terms and conditions as the Commission may prescribe.

(c) The Commission shall not permit a declaration regarding the issue or sale of a security to become effective unless it finds that—

(1) such security is (A) a common stock having a par value and being without preference as to dividends or distribution over, and having at least equal voting rights with, any outstanding security of the declarant; (B) a bond (i) secured by a first lien on physical property of the declarant, or (ii) secured by an obligation of a subsidiary company of the declarant secured by a first lien on physical property of such subsidiary company, or (iii) secured by any other assets of the type and character which the Commission by rules and regulations or order may prescribe as appropriate in the public interest or for the protection of investors; (C) a guaranty of, or assumption of liability on, a security of another company; or (D) a receiver's or trustee's certificate duly authorized by the appropriate court or courts; or

(2) such security is to be issued or sold solely (A) for the purpose of refunding, extending, exchanging, or discharging an outstanding security of the declarant and/or a predecessor company thereof or for the purpose of effecting a merger, consolidation, or other reorganization; (B) for the purpose of financing the business of the declarant as a public-utility company; (C) for the purpose of financing the business of the declarant, when the declarant is neither a holding company nor a public-utility company; and/or (D) for necessary and urgent corporate purposes of the declarant where the requirements of the provisions of paragraph (1) would impose an unreasonable financial burden upon the declarant and are not necessary or appropriate in the public interest or for the protection of investors or consumers; or

(3) such security is one the issuance of which was authorized by the company prior to January 1, 1935, and which the Commission by rules and regulations or order authorizes as necessary or appropriate in the public interest or for the protection of investors or consumers.

(d) If the requirements of subsections (c) and (g) are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that—

(1) the security is not reasonably adapted to the security structure of the declarant and other companies in the same holding-company system;

(2) the security is not reasonably adapted to the earning power of the declarant;

(3) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest;

(4) the fees, commissions, or other remuneration, to whomsoever paid, directly or indirectly, in connection with the issue, sale, or distribution of the security are not reasonable;

(5) in the case of a security that is a guaranty of, or assumption of liability on, a security of another company, the circumstances are such as to constitute the making of such guaranty or the assumption of such liability an improper risk for the declarant; or

(6) the terms and conditions of the issue or sale of the security are detrimental to the public interest or the interest of investors or consumers.

(e) If the requirements of subsection (g) are satisfied, the Commission shall permit a declaration to become effective regarding the exercise of a privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security unless the Commission finds that such exercise of such privilege or right will result in an unfair or inequitable distribution of voting power among holders of the securities of the declarant or is otherwise detrimental to the public interest or the interest of investors or consumers.

(f) Any order permitting a declaration to become effective may contain such terms and conditions as the Commission finds necessary to assure compliance with the conditions specified in this section.

(g) If a State commission or State securities commission, having jurisdiction over any of the acts enumerated in subsection (a) of section 6, shall inform the Commission, upon request by the Commission for an opinion or otherwise, that State laws applicable to the act in question have not been complied with, the Commission shall not permit a declaration regarding the act in question to become effective until and unless the Commission is satisfied that such compliance has been effected.

ACQUIRING INTEREST IN ELECTRIC AND GAS UTILITY COMPANIES SERVING SAME TERRITORY

SEC. 8. Whenever a State law prohibits, or requires approval or authorization of, the ownership or operation by a single company of the utility assets of an electric utility company and a gas utility company serving substantially the same territory, it shall be unlawful for a registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise,—

(1) to take any step, without the express approval of the State commission of such State, which results in its having a direct or indirect interest in an electric utility company and a gas utility company serving substantially the same territory; or

(2) if it already has any such interest, to acquire, without the express approval of the State commission, any direct or indirect interest in an electric utility company or gas utility company serving substantially the same territory as that served by such companies in which it already has an interest.

ACQUISITION OF SECURITIES AND UTILITY ASSETS AND OTHER INTERESTS

SEC. 9. (a) Unless the acquisition has been approved by the Commission under section 10, it shall be unlawful—

(1) for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to acquire, directly or indirectly, any securities or utility assets or any other interest in any business;

(2) for any person, by use of the mails or any means or instrumentality of interstate commerce, to acquire, directly or indirectly, any security of any public-utility company, if such person is an affiliate, under clause (A) of paragraph (11) of subsection (a) of section 2, of such company and of any other public utility or holding company, or will by virtue of such acquisition become such an affiliate.

(b) Subsection (a) shall not apply to—

(1) the acquisition by a public-utility company of utility assets the acquisition of which has been expressly authorized by a State commission; or

(2) the acquisition by a public-utility company of securities of a subsidiary public-utility company thereof, provided that both such public-utility companies and all other public-utility companies in the same holding-company system are organized in the same State, that the business of each such company in such system is substantially confined to such State, and that the acquisition of such securities has been expressly authorized by the State commission of such State.

(c) Subsection (a) shall not apply to the acquisition by a registered holding company, or a subsidiary company thereof, of—

(1) securities of, or securities the principal or interest of which is guaranteed by, the United States, a State, or political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing;

(2) such other readily marketable securities, within the limitation of such amounts, as the Commission may by rules and regulations prescribe as appropriate for investment of current funds and as not detrimental to the public interest or the interest of investors or consumers; or

(3) such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or

order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

APPROVAL OF ACQUISITION OF SECURITIES AND UTILITY ASSETS AND OTHER INTERESTS

SEC. 10. (a) A person may apply for approval of the acquisition of securities or utility assets, or of any other interest in any business, by filing an application in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors and consumers. Such application shall include—

(1) in the case of the acquisition of securities, such information and copies of such documents as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

(A) the security to be acquired, the consideration to be paid therefor, and compliance with such State laws as may apply in respect of the issue, sale, or acquisition thereof,

(B) the outstanding securities of the company whose security is to be acquired, the terms, position, rights, and privileges of each class and the options in respect of any such securities,

(C) the names of all security holders of record (or otherwise known to the applicant) owning, holding, or controlling 1 per centum or more of any class of security of such company, the officers and directors of such company, and their remuneration, security holdings in, material contracts with, and borrowings from such company and the offices or directorships held, and securities owned, held, or controlled, by them in other companies,

(D) the bonus, profit-sharing and voting-trust agreements, underwriting arrangements, trust indentures, mortgages, and similar documents, by whatever name known, of or relating to such company,

(E) the material contracts, not made in the ordinary course of business, and the service, sales, and construction contracts of such company,

(F) the securities owned, held, or controlled, directly or indirectly, by such company,

(G) balance sheets and profit and loss statements of such company for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission by an independent public accountant,

(H) any further information regarding such company and any associate company or affiliate thereof, or its relations with the applicant company, and

(I) if the applicant be not a registered holding company, any of the information and documents which may be required under section 5 from a registered holding company;

(2) in the case of the acquisition of utility assets, such information concerning such assets, the value thereof and consideration to be paid therefor, the owner or owners thereof and their

relation to, agreements with, and interest in the securities of, the applicant or any associate company thereof as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers; and

(3) in the case of the acquisition of any other interest in any business, such information concerning such business and the interest to be acquired, and the consideration to be paid, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

(b) If the requirements of subsection (f) are satisfied, the Commission shall approve the acquisition unless the Commission finds that—

(1) such acquisition will tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers;

(2) in case of the acquisition of securities or utility assets, the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired; or

(3) such acquisition will unduly complicate the capital structure of the holding-company system of the applicant or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning of such holding-company system.

The Commission may condition its approval of the acquisition of securities of another company upon such a fair offer to purchase such of the other securities of the company whose security is to be acquired as the Commission may find necessary or appropriate in the public interest or for the protection of investors or consumers.

(c) Notwithstanding the provisions of subsection (b), the Commission shall not approve—

(1) an acquisition of securities or utility assets, or of any other interest, which is unlawful under the provisions of section 8 or is detrimental to the carrying out of the provisions of section 11; or

(2) the acquisition of securities or utility assets of a public-utility or holding company unless the Commission finds that such acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system. This paragraph shall not apply to the acquisition of securities or utility assets of a public-utility company operating exclusively outside the United States.

(d) Within such reasonable time after the filing of an application under this section as the Commission shall fix by rules and regulations or order, the Commission shall enter an order either granting or, after notice and opportunity for hearing, denying approval of the acquisition unless the applicant shall withdraw its

application. Amendments to an application may be made upon such terms and conditions as the Commission may prescribe.

(e) The Commission, in any order approving the acquisition of securities or utility assets, may prescribe such terms and conditions in respect of such acquisition, including the price to be paid for such securities or utility assets, as the Commission may find necessary or appropriate in the public interest or for the protection of investors or consumers.

(f) The Commission shall not approve any acquisition as to which an application is made under this section unless it appears to the satisfaction of the Commission that such State laws as may apply in respect of such acquisition have been complied with, except where the Commission finds that compliance with such State laws would be detrimental to the carrying out of the provisions of section 11.

SIMPLIFICATION OF HOLDING-COMPANY SYSTEMS

SEC. 11. (a) It shall be the duty of the Commission to examine the corporate structure of every registered holding company and subsidiary company thereof, the relationships among the companies in the holding-company system of every such company and the character of the interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding-company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitably distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public-utility system.

(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24.

(c) Any order under subsection (b) shall be complied with within one year from the date of such order; but the Commission shall, upon a showing (made before or after the entry of such order) that the applicant has been or will be unable in the exercise of due diligence to comply with such order within such time, extend such time for an additional period not exceeding one year if it finds such extension necessary or appropriate in the public interest or for the protection of investors or consumers.

(d) The Commission may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce compliance with any order issued under subsection (b). In any such proceeding, the court as a court of equity may, to such extent as it deems necessary for purposes of enforcement of such order, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction, in any such proceeding, to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer under the direction of the court the assets so possessed. In any proceeding for the enforcement of an order of the Commis-

sion issued under subsection (b), the trustee with the approval of the court shall have power to dispose of any or all of such assets and, subject to such terms and conditions as the court may prescribe, may make such disposition in accordance with a fair and equitable reorganization plan which shall have been approved by the Commission after opportunity for hearing. Such reorganization plan may be proposed in the first instance by the Commission, or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization.

(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

(f) In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof, the court may constitute and appoint the Commission as sole trustee or receiver, subject to the directions and orders of the court, whether or not a trustee or receiver shall theretofore have been appointed, and in any such proceeding the court shall not appoint any person other than the Commission as trustee or receiver without notifying the Commission and giving it an opportunity to be heard before making any such appointment. In no proceeding under this section or otherwise shall the Commission be appointed as trustee or receiver without its express consent. In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effec-

tive unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission.

(g) It shall be unlawful for any person to solicit or permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, consent, authorization, power of attorney, deposit, or dissent in respect of any reorganization plan of a registered holding company or any subsidiary company thereof under this section, or otherwise, or in respect of any plan under this section for the divestment of control, securities, or other assets, or for the dissolution of any registered holding company or any subsidiary company thereof, unless—

(1) the plan has been proposed by the Commission, or the plan and such information regarding it and its sponsors as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers has been submitted to the Commission by a person having a bona fide interest (as defined by the rules and regulations of the Commission) in such reorganization;

(2) each such solicitation is accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission; and

(3) each such solicitation is made not in contravention of such rules and regulations or orders as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers.

Nothing in this subsection or the rules and regulations thereunder shall prevent any person from appearing before the Commission or any court through an attorney or proxy.

INTERCOMPANY LOANS; DIVIDENDS; SECURITY TRANSACTIONS; SALE OF UTILITY ASSETS; PROXIES; OTHER TRANSACTIONS

SEC. 12. (a) It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to borrow, or to receive any extension of credit or indemnity, from any public-utility company in the same holding-company system or from any subsidiary company of such holding company; but it shall not be

unlawful under this subsection to renew, or extend the time of, any loan, credit, or indemnity outstanding on the date of the enactment of this title.

(b) It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to lend or in any manner extend its credit to or indemnify any company in the same holding-company system in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

(c) It shall be unlawful for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to declare or pay any dividend on any security of such company or to acquire, retire, or redeem any security of such company, in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate to protect the financial integrity of companies in holding-company systems, to safeguard the working capital of public-utility companies, to prevent the payment of dividends out of capital or unearned surplus, or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

(d) It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding the consideration to be received for such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

(e) It shall be unlawful for any person to solicit or to permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, power of attorney, consent, or authorization regarding any security of a registered holding company or a subsidiary company thereof in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

(f) It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this title, with any company in the same holding-company system or with any affiliate of a company in such holding-company system in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts,

and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules and regulations thereunder.

(g) It shall be unlawful for any affiliate of any public-utility company, by use of the mails or any means or instrumentality of interstate commerce, or for any affiliate of any public-utility company engaged in interstate commerce, or of any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this title, with any such company of which it is an affiliate, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate to prevent the circumvention of the provisions of this title.

(h) It shall be unlawful for any registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly—

(1) to make any contribution whatsoever in connection with the candidacy, nomination, election or appointment of any person for or to any office or position in the Government of the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing; or

(2) to make any contribution to or in support of any political party or any committee or agency thereof.

The term "contribution" as used in this subsection includes any gift, subscription, loan, advance, or deposit of money or anything of value, and includes any contract, agreement, or promise, whether or not legally enforceable, to make a contribution.

(i) It shall be unlawful for any person employed or retained by any registered holding company, or any subsidiary company thereof, to present, advocate, or oppose any matter affecting any registered holding company or any subsidiary company thereof, before the Congress or any Member or committee thereof, or before the Commission or Federal Power Commission, or any member, officer, or employee of either such Commission, unless such person shall file with the Commission in such form and detail and at such time as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers, a statement of the subject matter in respect of which such person is retained or employed, the nature and character of such retainer or employment, and the amount of compensation received or to be received by such person, directly or indirectly, in connection therewith. It shall be the duty of every such person so employed or retained to file with the Commission within ten days after the close of each calendar month during such retainer or employment, in such form and detail as the Commission shall by

rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers, a statement of the expenses incurred and the compensation received by such person during such month in connection with such retainer or employment.

SERVICE, SALES, AND CONSTRUCTION CONTRACTS

SEC. 13. (a) After April 1, 1936, it shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof which is a public-utility or mutual service company. This provision shall not apply to such transactions, involving special or unusual circumstances or not in the ordinary course of business, as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers.

(b) After April 1, 1936, it shall be unlawful for any subsidiary company of any registered holding company or for any mutual service company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof except in accordance with such terms and conditions and subject to such limitations and prohibitions as the Commission by rules and regulations or order shall prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers and to insure that such contracts are performed economically and efficiently for the benefit of such associate companies at cost, fairly and equitably allocated among such companies. This provision shall not apply to such transactions as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers, if such transactions (1) are with any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public-utility company operating within the United States, or (2) involve special or unusual circumstances or are not in the ordinary course of business.

(c) The rules and regulations and orders of the Commission under this section may prescribe, among other things, such terms and conditions regarding the determination of costs and the allocation thereof among specified classes of companies and for specified classes of service, sales, and construction contracts, the duration of such contracts, the making and keeping of accounts and cost-accounting procedures, the filing of annual and other periodic and special reports, the maintenance of competitive conditions, the disclosure of interests, and similar matters, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

(d) The rules and regulations and orders of the Commission under this section shall prescribe, among other things, such terms and conditions regarding the manner in which application may be made for approval as a mutual service company and the granting and continuance of such approval, the nature and enforcement of agreements for the sharing of expenses and distributing of revenues among member companies, and matters relating to such agreements, the nature and types of businesses and transactions in which mutual service companies may engage, and the manner of engaging therein, and the relations and transactions with member companies and affiliates, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers. The Commission shall not approve, or continue the approval of, any company as a mutual service company unless the Commission finds such company is so organized as to ownership, costs, revenues, and the sharing thereof as reasonably to insure the efficient and economical performance of service, sales, or construction contracts by such company for member companies, at cost fairly and equitably allocated among such member companies, at a reasonable saving to member companies over the cost to such companies of comparable contracts performed by independent persons. The Commission, upon its own motion or at the request of a member company or a State commission, may, after notice and opportunity for hearing, by order require a reallocation or reapportionment of costs among member companies of a mutual service company if it finds the existing allocation inequitable and may require the elimination of a service or services to a member company which does not bear its fair proportion of costs or which, by reason of its size or other circumstances, does not require such service or services. The Commission, after notice and opportunity for hearing, by order shall revoke, suspend, or modify the approval given any mutual service company if it finds that such company has persistently violated any provision of this section or any rule, regulation, or order thereunder.

(e) It shall be unlawful for any affiliate of any public-utility company engaged in interstate commerce, or of any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract, by which such affiliate undertakes to perform services or construction work for, or sell goods to, any such company of which it is an affiliate, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters, as the Commission deems necessary or appropriate to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

(f) It shall be unlawful for any person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies, by use of the mails or any means or instrumentality of interstate commerce, to enter into or take any step in the performance of any service, sales, or construction contract with any public-utility company, or for any such person, by use of

the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract with any public-utility company engaged in interstate commerce, or with any registered holding company or any subsidiary company of a registered holding company, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

(g) The Commission, in order to obtain information to serve as a basis for recommending further legislation, shall from time to time conduct investigations regarding the making, performance, and costs of service, sales, and construction contracts with holding companies and subsidiary companies thereof and with public-utility companies, the economies resulting therefrom, and the desirability thereof. The Commission shall report to Congress, from time to time, the results of such investigations, together with such recommendations for legislation as it deems advisable. On the basis of such investigations the Commission shall classify the different types of such contracts and the work done thereunder, and shall make recommendations from time to time regarding the standards and scope of such contracts in relation to public-utility companies of different kinds and sizes and the costs incurred thereunder and economies resulting therefrom. Such recommendations shall be made available to State commissions, public-utility companies, and to the public in such form and at such reasonable charge as the Commission may prescribe.

PERIODIC AND OTHER REPORTS

SEC. 14. Every registered holding company and every mutual service company shall file with the Commission such annual, quarterly, and other periodic and special reports, the answers to such specific questions and the minutes of such directors', stockholders', and other meetings, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such reports, if required by the rules and regulations of the Commission, shall be certified by an independent public accountant, and shall be made and filed at such time and in such form and detail as the Commission shall prescribe. The Commission may require that there be included in reports filed with it such information and documents as it finds necessary or appropriate to keep reasonably current the information filed under section 5 or 13, and such further information concerning the financial condition, security structure, security holdings, assets, and cost thereof, wherever determinable, and affiliations of the reporting company and the associate companies, member companies, and affiliates thereof as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

ACCOUNTS AND RECORDS

SEC. 15. (a) Every registered holding company and every subsidiary company thereof shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules, regulations, or orders thereunder.

(b) Every affiliate of a registered holding company or of any subsidiary company thereof, or of any public-utility company engaged in interstate commerce or not so engaged, shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records relating to any transaction of such affiliate which is subject to any provision of this title or any rule, regulation, or order thereunder, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules, regulations, or orders thereunder.

(c) Every mutual service company, and every affiliate of a mutual service company as to any transaction of such affiliate which is subject to any provision of this title or any rule, regulation, or order thereunder, shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules, regulations, or orders thereunder.

(d) Every person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records, relating to any transaction by such person which is subject to any provision of this title or any rule, regulation, or order thereunder, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this title or the rules and regulations thereunder.

(e) After the Commission has prescribed the form and manner of making and keeping accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records to be kept by any person hereunder, it shall be unlawful for any such person to keep any accounts, cost-accounting procedures, correspondence, memoranda, papers, books, or other records other than those prescribed or such as may be approved by the Commission, or to keep his or its accounts, cost-accounting procedures, correspondence, memoranda, papers, books, or other records in any manner other than that prescribed or approved by the Commission.

(f) All accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records kept or required to be kept by persons subject to any provision of this section shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any

member or representative thereof, as the Commission may prescribe. The Commission, after notice and opportunity for hearing, may prescribe the account or accounts in which particular outlays, receipts, and other transactions shall be entered, charged, or credited and the manner in which such entry, charge, or credit shall be made, and may require an entry to be modified or supplemented so as properly to show the cost of any asset or any other cost.

(g) It shall be the duty of every registered holding company and of every subsidiary company thereof and of every affiliate of a company insofar as such affiliate is subject to any provision of this title or any rule, regulation, or order thereunder, to submit the accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records of such holding company, subsidiary company, or affiliate, as the case may be, to such examinations, in person or by duly appointed attorney, by the holder of any security of such holding company, subsidiary company, or affiliate, as the case may be, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

(h) It shall be the duty of every mutual service company, and of every affiliate of a mutual service company, and of every person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies, insofar as such affiliate or such person is subject to any provision of this title or any rule, regulation, or order thereunder, to submit the accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records of such mutual service company, affiliate, or person to such examinations, in person or by duly appointed attorney, by member companies of such mutual service company and by public-utility or holding companies for which such person performs service, sales, or construction contracts as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

(i) The Commission, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors or consumers may prescribe for persons subject to the provisions of subsection (a), (b), (c), or (d) of this section uniform methods for keeping accounts required under any provision of this section, including, among other things, the manner in which the cost of all assets, whenever determinable, shall be shown, the methods of classifying and segregating accounts, and the manner in which cost-accounting procedures shall be maintained.

LIABILITY FOR MISLEADING STATEMENTS

SEC. 16. (a) Any person who shall make or cause to be made any statement in any application, report, registration statement, or document filed pursuant to any provision of this title, or any rule, regulation, or order thereunder, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact shall be liable in the same manner, to the same extent, and subject to the same limitations as provided in section 18 of the Securities Exchange Act of 1934 with respect to an application, report, or document filed pursuant to the Securities Exchange Act of 1934.

(b) The rights and remedies provided by this title, except as provided in section 17 (b), shall be in addition to any and all other rights and remedies that may exist under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, or otherwise at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of.

OFFICERS, DIRECTORS, AND OTHER AFFILIATES

SEC. 17. (a) Every person who is an officer or director of a registered holding company shall file with the Commission in such form as the Commission shall prescribe (1) at the time of the registration of such holding company, or within ten days after such person becomes an officer or director, a statement of the securities of such registered holding company or any subsidiary company thereof of which he is, directly or indirectly, the beneficial owner, and (2) within ten days after the close of each calendar month thereafter, if there has been any change in such ownership during such month, a statement of such ownership as of the close of such calendar month and of the changes in such ownership that have occurred during such calendar month.

(b) For the purpose of preventing the unfair use of information which may have been obtained by any such officer or director by reason of his relationship to such registered holding company or any subsidiary company thereof, any profit realized by any such officer or director from any purchase and sale, or any sale and purchase, of any security of such registered holding company or any subsidiary company thereof within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the holding company or subsidiary company in respect of the security of which such profit was realized, irrespective of any intention on the part of such officer or director in entering into such transaction to hold the security purchased or not to repurchase the security sold for a period of more than six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company entitled thereto or by the owner of any security of such company in the name and in the behalf of such company if such company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not cover any transaction where such person was not an officer or director at the times of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may, as necessary or appropriate in the public interest or for the protection of investors or consumers, exempt as not comprehended within the purpose of this subsection. Nothing in this subsection shall be construed to give a remedy in the case of any transaction in respect of which a remedy is given under subsection (b) of section 16 of the Securities Exchange Act of 1934.

(c) After one year from the date of the enactment of this title, no registered holding company or any subsidiary company thereof shall have, as an officer or director thereof, any executive officer, director, partner, appointee, or representative of any bank, trust company, investment banker, or banking association or firm, or any executive officer, director, partner, appointee, or representative of any corporation a majority of whose stock, having the unrestricted right to vote for the election of directors, is owned by any bank, trust company, investment banker, or banking association or firm, except in such cases as rules and regulations prescribed by the Commission may permit as not adversely affecting the public interest or the interest of investors or consumers.

INVESTIGATIONS; INJUNCTIONS, ENFORCEMENT OF TITLE, AND PROSECUTION OF OFFENSES

SEC. 18. (a) The Commission, in its discretion, may investigate any facts, conditions, practices, or matters which it may deem necessary or appropriate to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation thereunder, or to aid in the enforcement of the provisions of this title, in the prescribing of rules and regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this title relates. The Commission may require or permit any person to file with it a statement in writing, under oath or otherwise as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish, or make available to State commissions, information concerning any such subject.

(b) The Commission upon its own motion or at the request of a State commission may investigate, or obtain any information regarding the business, financial condition, or practices of any registered holding company or subsidiary company thereof or facts, conditions, practices, or matters affecting the relations between any such company and any other company or companies in the same holding-company system.

(c) For the purpose of any investigation or any other proceeding under this title, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(d) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such

court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who, without just cause, shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(e) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(f) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, the Supreme Court of the District of Columbia, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this title or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this title.

(g) Upon application of the Commission, the district courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this title or any rule, regulation, or order of the Commission thereunder.

HEARINGS BY COMMISSION

SEC. 19. Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State, State commission, State securities commission, municipality, or other political subdivision of a State, and may admit as a party any representative of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers.

RULES, REGULATIONS, AND ORDERS

SEC. 20. (a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate to carry out the provisions of this title, including rules and regulations defining accounting, technical, and trade terms used in this title. Among other things, the Commission shall have authority, for the purposes of this title, to prescribe the form or forms in which information required in any statement, declaration, application, report, or other document filed with the Commission shall be set forth, the items or details to be shown in balance sheets, profit and loss statements, and surplus accounts, the manner in which the cost of all assets, whenever determinable, shall be shown in regard to such statements, declarations, applications, reports, and other documents filed with the Commission, or accounts required to be kept by the rules, regulations, or orders of the Commission, and the methods to be followed in the keeping of accounts and cost-accounting procedures and the preparation of reports, in the segregation and allocation of costs, in the determination of liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the keeping or preparation, where the Commission deems it necessary or appropriate, of separate or consolidated balance sheets or profit and loss statements for any companies in the same holding-company system.

(b) In the case of the accounts of any company whose methods of accounting are prescribed under the provisions of any law of the United States or of any State, the rules and regulations or orders of the Commission in respect of accounts shall not be inconsistent with the requirements imposed by such law or any rule or regulation thereunder; nor shall anything in this title relieve any public-utility company from the duty to keep the accounts, books, records, or memoranda which may be required to be kept by the law of any State in which it operates or by the State commission of any such State. But this provision shall not prevent the Commission from imposing such additional requirements regarding reports or accounts as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers.

(c) The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. For the purpose of its rules, regulations, or orders the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. Orders of the Commission under this title shall be issued only after opportunity for hearing.

(d) The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors or consumers, may authorize the filing of any information or documents required to be filed with the Commission under this title, or under the Securities Act of 1933, as amended, or under the Securities Exchange Act of 1934, by incorporating by reference any information or documents theretofore or concurrently filed with the Commission under this title or either of such Acts. No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

EFFECT ON EXISTING LAW

SEC. 21. Nothing in this title shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934 over any person, security, or contract, or (2) the rights, obligations, duties, or liabilities of any person under such Acts; nor shall anything in this title affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person, security, or contract, insofar as such jurisdiction does not conflict with any provision of this title or any rule, regulation, or order thereunder.

INFORMATION FILED WITH THE COMMISSION

SEC. 22. (a) When in the judgment of the Commission the disclosure of such information would be in the public interest or the interest of investors or consumers, the information contained in any statement, application, declaration, report, or other document filed with the Commission shall be available to the public, and copies thereof may be furnished to any person at such reasonable charge and under such reasonable limitations as the Commission may prescribe: *Provided, however*, That nothing in this title shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, declaration, report, or document filed with the Commission under this title.

(b) Any person filing such application, declaration, report, or document may make written objection to the public disclosure of information contained therein, stating the grounds for such objection, and the Commission is authorized to hear objections in any such case where it finds it advisable.

(c) It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member,

officer, or employee of the Commission, or to use for personal benefit, any information contained in any application, declaration, report, or document filed with the Commission which is not made available to the public pursuant to this section.

ANNUAL REPORTS OF COMMISSION

SEC. 23. The Commission shall submit annually a report to the Congress covering the work of the Commission for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this title as it may find advisable.

COURT REVIEW OF ORDERS

SEC. 24. (a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

JURISDICTION OF OFFENSES AND SUITS

SEC. 25. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 225 and 347), and section 7, as amended, of the Act entitled "An Act to establish a court of appeals for the District of Columbia", approved February 9, 1893 (D. C. Code, title 18, sec. 26). No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court.

VALIDITY OF CONTRACTS

SEC. 26. (a) Any condition, stipulation, or provision binding any person to waive compliance with any provision of this title or with any rule, regulation, or order thereunder shall be void.

(b) Every contract made in violation of any provision of this title or of any rule, regulation, or order thereunder, and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this title, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, regulation, or order.

(c) Nothing in this title shall be construed (1) to affect the validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the enactment of this title, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making

of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien is a violation of the provisions of this title or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this title or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien.

LIABILITY OF CONTROLLING PERSONS; PREVENTING COMPLIANCE WITH TITLE

SEC. 27. (a) It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this title or any rule, regulation, or order thereunder.

(b) It shall be unlawful for any person without just cause to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, record, or account required to be made, filed, or kept under any provision of this title or any rule, regulation, or order thereunder.

UNLAWFUL REPRESENTATIONS

SEC. 28. It shall be unlawful for any person in issuing, selling, or offering for sale any security of a registered holding company or subsidiary company thereof, to represent or imply in any manner whatsoever that such security has been guaranteed, sponsored, or recommended for investment by the United States or any agency or officer thereof.

PENALTIES

SEC. 29. Any person who willfully violates any provision of this title or any rule, regulation, or order thereunder (other than an order of the Commission under subsection (b), (d), (e), or (f) of section 11), or any person who willfully makes any statement or entry in any application, report, document, account, or record filed or kept or required to be filed or kept under the provisions of this title or any rule, regulation, or order thereunder, knowing such statement or entry to be false or misleading in any material respect, or any person who willfully destroys (except after such time as may be prescribed under any rules or regulations under this title), mutilates, alters, or by any means or device falsifies any account, correspondence, memorandum, book, paper, or other record kept or required to be kept under the provisions of this title or any rule, regulation, or order thereunder, shall upon conviction be fined not more than $10,000 or imprisoned not more than two years, or both, except that in the case of a violation of a provision of subsection (a) or (b) of section 4 by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding $200,000; but no person shall be convicted under this section for the violation of any

rule, regulation, or order if he proves that he had no knowledge of such rule, regulation, or order.

STUDY OF PUBLIC-UTILITY AND INVESTMENT COMPANIES

SEC. 30. The Commission is authorized and directed to make studies and investigations of public-utility companies, the territories served or which can be served by public-utility companies, and the manner in which the same are or can be served, to determine the sizes, types, and locations of public-utility companies which do or can operate most economically and efficiently in the public interest, in the interest of investors and consumers, and in furtherance of a wider and more economical use of gas and electric energy; upon the basis of such investigations and studies the Commission shall make public from time to time its recommendations as to the type and size of geographically and economically integrated public-utility systems which, having regard for the nature and character of the locality served, can best promote and harmonize the interests of the public, the investor, and the consumer. The Commission is authorized and directed to make a study of the functions and activities of investment trusts and investment companies, the corporate structures, and investment policies of such trusts and companies, the influence exerted by such trusts and companies upon companies in which they are interested, and the influence exerted by interests affiliated with the management of such trusts and companies upon their investment policies, and to report the results of its study and its recommendations to the Congress on or before January 4, 1937.

EMPLOYEES OF THE COMMISSION

SEC. 31. For the purposes of this title, the Commission may select, employ, and fix the compensation of such attorneys, examiners, and other experts as shall be necessary for the transaction of the business of the Commission in respect of this title without regard to the provisions of other laws applicable to the employment and compensation of officers or employees of the United States; and the Commission may, subject to the civil-service laws, appoint such other officers and employees as are necessary in the execution of the functions of the Commission and fix their salaries in accordance with the Classification Act of 1923, as amended.

SEPARABILITY OF PROVISIONS

SEC. 32. If any provision of this title or the application of such provision to any person or circumstances shall be held invalid, the remainder of the title and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

SHORT TITLE

SEC. 33. This title may be cited as the "Public Utility Holding Company Act of 1935".

TITLE II—AMENDMENTS TO FEDERAL WATER POWER ACT

SECTION 201. Section 3 of the Federal Water Power Act, as amended, is amended to read as follows:

"SEC. 3. The words defined in this section shall have the following meanings for purposes of this Act, to wit:

"(1) 'public lands' means such lands and interest in lands owned by the United States as are subject to private appropriation and disposal under public land laws. It shall not include 'reservations', as hereinafter defined;

"(2) 'reservations' means national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interests in lands owned by the United States, and withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws; also lands and interests in lands acquired and held for any public purposes; but shall not include national monuments or national parks;

"(3) 'corporation' means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include 'municipalities' as hereinafter defined;

"(4) 'person' means an individual or a corporation;

"(5) 'licensee' means any person, State, or municipality licensed under the provisions of section 4 of this Act, and any assignee or successor in interest thereof;

"(6) 'State' means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States;

"(7) 'municipality' means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power;

"(8) 'navigable waters' means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority;

"(9) 'municipal purposes' means and includes all purposes within municipal powers as defined by the constitution or laws of the State or by the charter of the municipality;

"(10) 'Government dam' means a dam or other work constructed or owned by the United States for Government purposes with or without contribution from others;

"(11) 'project' means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and

appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;

"(12) 'project works' means the physical structures of a project;

"(13) 'net investment' in a project means the actual legitimate original cost thereof as defined and interpreted in the 'classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission', plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created. The term 'cost' shall include, insofar as applicable, the elements thereof prescribed in said classification, but shall not include expenditures from funds obtained through donations by States, municipalities, individuals, or others, and said classification of investment of the Interstate Commerce Commission shall insofar as applicable be published and promulgated as a part of the rules and regulations of the Commission;

"(14) 'Commission' and 'Commissioner' means the Federal Power Commission, and a member thereof, respectively;

"(15) 'State commission' means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or municipality;

"(16) 'security' means any note, stock, treasury stock, bond, debenture, or other evidence of interest in or indebtedness of a corporation subject to the provisions of this Act."

SEC. 202. Section 4 of the Federal Water Power Act, as amended, is amended to read as follows:

"SEC. 4. The Commission is hereby authorized and empowered—

"(a) To make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water-power industry and its relation to other industries and to interstate or foreign commerce, and concerning the location, capacity, development costs, and relation to markets of power sites, and whether the power from Government dams can be advantageously used by the United States for its public purposes, and what is a fair value of such power, to the extent the Commission may deem necessary or useful for the purposes of this Act.

"(b) To determine the actual legitimate original cost of and the net investment in a licensed project, and to aid the Commission

in such determinations, each licensee shall, upon oath, within a reasonable period of time to be fixed by the Commission, after the construction of the original project or any addition thereto or betterment thereof, file with the Commission in such detail as the Commission may require, a statement in duplicate showing the actual legitimate original cost of construction of such project, addition, or betterment, and of the price paid for water rights, rights-of-way, lands, or interest in lands. The licensee shall grant to the Commission or to its duly authorized agent or agents, at all reasonable times, free access to such project, addition, or betterment, and to all maps, profiles, contracts, reports of engineers, accounts, books, records, and all other papers and documents relating thereto. The statement of actual legitimate original cost of said project, and revisions thereof as determined by the Commission, shall be filed with the Secretary of the Treasury.

"(c) To cooperate with the executive departments and other agencies of State or National Governments in such investigations; and for such purpose the several departments and agencies of the National Government are authorized and directed upon the request of the Commission to furnish such records, papers, and information in their possession as may be requested by the Commission, and temporarily to detail to the Commission such officers or experts as may be necessary in such investigations.

"(d) To make public from time to time the information secured hereunder and to provide for the publication of its reports and investigations in such form and manner as may be best adapted for public information and use. The Commission, on or before the 3d day of January of each year, shall submit to Congress for the fiscal year preceding a classified report showing the permits and licenses issued under this Part, and in each case the parties thereto, the terms prescribed, and the moneys received if any, or account thereof. Such report shall contain the names and show the compensation of the persons employed by the Commission.

"(e) To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided*, That licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary

for the adequate protection and utilization of such reservation: *Provided further*, That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting navigation have been approved by the Chief of Engineers and the Secretary of War. Whenever the contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the Commission and shall become a part of the records of the Commission: *Provided further*, That in case the Commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to Congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to June 10, 1920: *And provided further*, That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (f) of this section, notice shall be given and published as required by the proviso of said subsection.

"(f) To issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by section 9 hereof: *Provided, however*, That upon the filing of any application for a preliminary permit by any person, association, or corporation the Commission, before granting such application, shall at once give notice of such application in writing to any State or municipality likely to be interested in or affected by such application; and shall also publish notice of such application once each week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated.

"(g) Upon its own motion to order an investigation of any occupancy of, or evidenced intention to occupy, for the purpose of developing electric power, public lands, reservations, or streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States by any person, corporation, State, or municipality and to issue such order as it may find appropriate, expedient, and in the public interest to conserve and utilize the navigation and water-power resources of the region."

SEC. 203. Section 5 of the Federal Water Power Act, as amended, is amended to read as follows:

"SEC. 5. Each preliminary permit issued under this Part shall be for the sole purpose of maintaining priority of application for a license under the terms of this Act for such period or periods, not exceeding a total of three years, as in the discretion of the Commission may be necessary for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements. Each such permit shall set forth the conditions under which priority shall be maintained. Such permits shall not be transferable, and may be canceled by order of the Commission upon failure of permittees to comply with the conditions thereof

or for other good cause shown after notice and opportunity for hearing."

SEC. 204. Section 6 of the Federal Water Power Act, as amended, is amended to read as follows:

"SEC. 6. Licenses under this Part shall be issued for a period not exceeding fifty years. Each such license shall be conditioned upon acceptance by the licensee of all the terms and conditions of this Act and such further conditions, if any, as the Commission shall prescribe in conformity with this Act, which said terms and conditions and the acceptance thereof shall be expressed in said license. Licenses may be revoked only for the reasons and in the manner prescribed under the provisions of this Act, and may be altered or surrendered only upon mutual agreement between the licensee and the Commission after thirty days' public notice. Copies of all licenses issued under the provisions of this Part and calling for the payment of annual charges shall be deposited with the General Accounting Office, in compliance with section 3743, Revised Statutes, as amended (U. S. C., title 41, sec. 20)."

SEC. 205. Section 7 of the Federal Water Power Act, as amended, is amended to read as follows:

"SEC. 7. (a) In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.

"(b) Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find appropriate concerning such development."

SEC. 206. Section 10 of the Federal Water Power Act, as amended, is amended to read as follows:

"SEC. 10. All licenses issued under this Part shall be on the following conditions:

"(a) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the

Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

"(b) That except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works constructed hereunder of an installed capacity in excess of one hundred horsepower without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

"(c) That the licensee shall maintain the project works in a condition of repair adequate for the purposes of navigation and for the efficient operation of said works in the development and transmission of power, shall make all necessary renewals and replacements, shall establish and maintain adequate depreciation reserves for such purposes, shall so maintain and operate said works as not to impair navigation, and shall conform to such rules and regulations as the Commission may from time to time prescribe for the protection of life, health, and property. Each licensee hereunder shall be liable for all damages occasioned to the property of others by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto, constructed under the license, and in no event shall the United States be liable therefor.

"(d) That after the first twenty years of operation, out of surplus earned thereafter, if any, accumulated in excess of a specified reasonable rate of return upon the net investment of a licensee in any project or projects under license, the licensee shall establish and maintain amortization reserves, which reserves shall, in the discretion of the Commission, be held until the termination of the license or be applied from time to time in reduction of the net investment. Such specified rate of return and the proportion of such surplus earnings to be paid into and held in such reserves shall be set forth in the license.

"(e) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part; for recompensing it for the use, occupancy, and enjoyment of its lands or other property; and for the expropriation to the Government of excessive profits until the respective States shall make provision for preventing excessive profits or for the expropriation thereof to themselves, or until the period of amortization as herein provided is reached, and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require: *Provided*, That when licenses are issued involving the use of Government dams or other structures owned by the United States or tribal lands embraced within Indian reservations the Commission shall, subject to the approval of the Secretary of the Interior in the case of such dams or structures in reclamation projects and, in the case of such tribal lands, subject to the approval of the Indian tribe having jurisdiction of such lands as provided in section 16 of the Act of June 18, 1934 (48 Stat. 984),

fix a reasonable annual charge for the use thereof, and such charges may with like approval be readjusted by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter upon notice and opportunity for hearing: *Provided further*, That licenses for the development, transmission, or distribution of power by States or municipalities shall be issued and enjoyed without charge to the extent such power is sold to the public without profit or is used by such State or municipality for State or municipal purposes, except that as to projects constructed or to be constructed by States or municipalities primarily designed to provide or improve navigation, licenses therefor shall be issued without charge; and that licenses for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in projects of not more than one hundred horsepower installed capacity may be issued without charge, except on tribal lands within Indian reservations; but in no case shall a license be issued free of charge for the development and utilization of power created by any Government dam and that the amount charged therefor in any license shall be such as determined by the Commission. In the event an overpayment of any charge due under this section shall be made by a licensee, the Commission is authorized to allow a credit for such overpayment when charges are due for any subsequent period.

"(f) That whenever any licensee hereunder is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable. The proportion of such charges to be paid by any licensee shall be determined by the Commission. The licensees or permittees affected shall pay to the United States the cost of making such determination as fixed by the Commission.

"Whenever such reservoir or other improvement is constructed by the United States the Commission shall assess similar charges against any licensee directly benefited thereby, and any amount so assessed shall be paid into the Treasury of the United States, to be reserved and appropriated as a part of the special fund for headwater improvements as provided in section 17 hereof.

"Whenever any power project not under license is benefited by the construction work of a licensee or permittee, the United States or any agency thereof, the Commission, after notice to the owner or owners of such unlicensed project, shall determine and fix a reasonable and equitable annual charge to be paid to the licensee or permittee on account of such benefits, or to the United States if it be the owner of such headwater improvement.

"(g) Such other conditions not inconsistent with the provisions of this Act as the Commission may require.

"(h) That combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

"(i) In issuing licenses for a minor part only of a complete project, or for a complete project of not more than one hundred horsepower installed capacity, the Commission may in its discretion waive such conditions, provisions, and requirements of this Part, except the license period of fifty years, as it may deem to be to the public interest to waive under the circumstances: *Provided*, That the provisions hereof shall not apply to annual charges for use of lands within Indian reservations."

SEC. 207. Section 14 of the Federal Water Power Act, as amended, is amended to read as follows:

"SEC. 14. Upon not less than two years' notice in writing from the Commission the United States shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project or projects as defined in section 3 hereof, and covered in whole or in part by the license, or the right to take over upon mutual agreement with the licensee all property owned and held by the licensee then valuable and serviceable in the development, transmission, or distribution of power and which is then dependent for its usefulness upon the continuance of the license, together with any lock or locks or other aids to navigation constructed at the expense of the licensee, upon the condition that before taking possession it shall pay the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severance therefrom of property taken, and shall assume all contracts entered into by the licensee with the approval of the Commission. The net investment of the licensee in the project or projects so taken and the amount of such severance damages, if any, shall be determined by the Commission after notice and opportunity for hearing. Such net investment shall not include or be affected by the value of any lands, rights-of-way, or other property of the United States licensed by the Commission under this Act, by the license or by good will, going value, or prospective revenues; nor shall the values allowed for water rights, rights-of-way, lands, or interest in lands be in excess of the actual reasonable cost thereof at the time of acquisition by the licensee: *Provided*, That the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under this Act at any time by condemnation proceedings upon payment of just compensation is hereby expressly reserved."

SEC. 208. Section 17 of the Federal Water Power Act, as amended, is amended to read as follows:

"SEC. 17. (a) All proceeds from any Indian reservation shall be placed to the credit of the Indians of such reservation. All other charges arising from licenses hereunder, except charges fixed by the Commission for the purpose of reimbursing the United States for the costs of administration of this Part, shall be paid into the Treasury of the United States, subject to the following distribution: 12½ per centum thereof is hereby appropriated to be paid into the Treasury of the United States and credited to 'Miscellaneous receipts'; 50 per centum of the charges arising from licenses hereunder for the occupancy and use of public lands and national forests

shall be paid into, reserved, and appropriated as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902; and 37½ per centum of the charges arising from licenses hereunder for the occupancy and use of national forests and public lands from development within the boundaries of any State shall be paid by the Secretary of the Treasury to such State; and 50 per centum of the charges arising from all other licenses hereunder is hereby reserved and appropriated as a special fund in the Treasury to be expended under the direction of the Secretary of War in the maintenance and operation of dams and other navigation structures owned by the United States or in the construction, maintenance, or operation of headwater or other improvements of navigable waters of the United States. The proceeds of charges made by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part shall be paid into the Treasury of the United States and credited to miscellaneous receipts.

"(b) In case of delinquency on the part of any licensee in the payment of annual charges a penalty of 5 per centum of the total amount so delinquent may be added to the total charges which shall apply for the first month or part of month so delinquent with an additional penalty of 3 per centum for each subsequent month until the total of the charges and penalties are paid or until the license is canceled and the charges and penalties satisfied in accordance with law."

SEC. 209. Section 18 of the Federal Water Power Act, as amended, is amended to read as follows:

"SEC. 18. The Commission shall require the construction, maintenance, and operation by a licensee at its own expense of such lights and signals as may be directed by the Secretary of War, and such fishways as may be prescribed by the Secretary of Commerce. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure built under the provisions of this Act, whether at the expense of a licensee hereunder or of the United States, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure as may be made from time to time by the Secretary of War; and for willful failure to comply with any such rule or regulation such licensee shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 316 hereof."

SEC. 210. Section 23 of the Federal Water Power Act, as amended, is amended to read as follows:

"SEC. 23. (a) The provisions of this Part shall not be construed as affecting any permit or valid existing right-of-way heretofore granted or as confirming or otherwise affecting any claim, or as affecting any authority heretofore given pursuant to law, but any person, association, corporation, State, or municipality holding or possessing such permit, right-of-way, or authority may apply for a license hereunder, and upon such application the Commission may issue to any such applicant a license in accordance with the provisions of this Part and in such case the provisions of this Act

shall apply to such applicant as a licensee hereunder: *Provided*, That when application is made for a license under this section for a project or projects already constructed the fair value of said project or projects determined as provided in this section, shall for the purposes of this Part and of said license be deemed to be the amount to be allowed as the net investment of the applicant in such project or projects as of the date of such license, or as of the date of such determination, if license has not been issued. Such fair value shall be determined by the Commission after notice and opportunity for hearing.

"(b) It shall be unlawful for any person, State, or municipality, for the purpose of developing electric power, to construct, operate, or maintain any dam, water conduit, reservoir, power house, or other works incidental thereto across, along, or in any of the navigable waters of the United States, or upon any part of the public lands or reservations of the United States (including the Territories), or utilize the surplus water or water power from any Government dam, except under and in accordance with the terms of a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to this Act. Any person, association, corporation, State, or municipality intending to construct a dam or other project works across, along, over, or in any stream or part thereof, other than those defined herein as navigable waters, and over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States shall before such construction file declaration of such intention with the Commission, whereupon the Commission shall cause immediate investigation of such proposed construction to be made, and if upon investigation it shall find that the interests of interstate or foreign commerce would be affected by such proposed construction, such person, association, corporation, State, or municipality shall not construct, maintain, or operate such dam or other project works until it shall have applied for and shall have received a license under the provisions of this Act. If the Commission shall not so find, and if no public lands or reservations are affected, permission is hereby granted to construct such dam or other project works in such stream upon compliance with State laws."

SEC. 211. Section 24 of the Federal Water Power Act, as amended, is amended to read as follows:

"SEC. 24. Any lands of the United States included in any proposed project under the provisions of this Part shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located. Whenever the Commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws, the Secretary of the Interior, upon notice of such determination, shall declare

such lands open to location, entry, or selection, for such purpose or purposes and under such restrictions as the Commission may determine, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the Commission, for the purposes of this Part, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Part, upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the Commission: *Provided*, That locations, entries, selections, or filings heretofore made for lands reserved as water-power sites, or in connection with water-power development, or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained.

SEC. 212. Sections 1 to 29, inclusive, of the Federal Water Power Act, as amended, shall constitute Part I of that Act, and sections 25 and 30 of such Act, as amended, are repealed: *Provided*, That nothing in that Act, as amended, shall be construed to repeal or amend the provisions of the amendment to the Federal Water Power Act approved March 3, 1921 (41 Stat. 1353), or the provisions of any other Act relating to national parks and national monuments.

SEC. 213. The Federal Water Power Act, as amended, is further amended by adding thereto the following parts:

"PART II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

"DECLARATION OF POLICY; APPLICATION OF PART; DEFINITIONS

"SECTION 201. (a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

"(b) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction,

except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

"(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

"(d) The term 'sale of electric energy at wholesale' when used in this Part means a sale of electric energy to any person for resale.

"(e) The term 'public utility' when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part.

"(f) No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

"INTERCONNECTION AND COORDINATION OF FACILITIES; EMERGENCIES; TRANSMISSION TO FOREIGN COUNTRIES

"SEC. 202. (a) For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

"(b) Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical

connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

"(c) During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

"(d) During the continuance of any emergency requiring immediate action, any person engaged in the transmission or sale of electric energy and not otherwise subject to the jurisdiction of the Commission may make such temporary connections with any public utility subject to the jurisdiction of the Commission or may construct such temporary facilities for the transmission of electric energy in interstate commerce as may be necessary or appropriate to meet such emergency, and shall not become subject to the jurisdiction of the Commission by reason of such temporary connection or temporary construction: *Provided*, That such temporary connection shall be discontinued or such temporary construction removed or otherwise disposed of upon the termination of such emergency: *Provided further*, That upon approval of the Commission permanent connections for emergency use only may be made hereunder.

"(e) After six months from the date on which this Part takes effect, no person shall transmit any electric energy from the United States to a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application unless, after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may by its order grant such application in whole or in part, with such modifications and upon such terms and conditions

as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate.

"DISPOSITION OF PROPERTY; CONSOLIDATIONS; PURCHASE OF SECURITIES

"SEC. 203. (a) No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so. Upon application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable. After notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same.

"(b) The Commission may grant any application for an order under this section in whole or in part and upon such terms and conditions as it finds necessary or appropriate to secure the maintenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may from time to time for good cause shown make such orders supplemental to any order made under this section as it may find necessary or appropriate.

"ISSUANCE OF SECURITIES; ASSUMPTION OF LIABILITIES

"SEC. 204. (a) No public utility shall issue any security, or assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person, unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorizes such issue or assumption of liability. The Commission shall make such order only if it finds that such issue or assumption (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes. The provisions of this section shall be effective six months after this Part takes effect.

"(b) The Commission, after opportunity for hearing, may grant any application under this section in whole or in part, and with such modifications and upon such terms and conditions as it may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate, and may by any such supplemental order modify the provisions of any

previous order as to the particular purposes, uses, and extent to which, or the conditions under which, any security so theretofore authorized or the proceeds thereof may be applied, subject always to the requirements of subsection (a) of this section.

"(c) No public utility shall, without the consent of the Commission, apply any security or any proceeds thereof to any purpose not specified in the Commission's order, or supplemental order, or to any purpose in excess of the amount allowed for such purpose in such order, or otherwise in contravention of such order.

"(d) The Commission shall not authorize the capitalization of the right to be a corporation or of any franchise, permit, or contract for consolidation, merger, or lease in excess of the amount (exclusive of any tax or annual charge) actually paid as the consideration for such right, franchise, permit, or contract.

"(e) Subsection (a) shall not apply to the issue or renewal of, or assumption of liability on, a note or draft maturing not more than one year after the date of such issue, renewal, or assumption of liability, and aggregating (together with all other then outstanding notes and drafts of a maturity of one year or less on which such public utility is primarily or secondarily liable) not more than 5 per centum of the par value of the other securities of the public utility then outstanding. In the case of securities having no par value, the par value for the purpose of this subsection shall be the fair market value as of the date of issue. Within ten days after any such issue, renewal, or assumption of liability, the public utility shall file with the Commission a certificate of notification, in such form as may be prescribed by the Commission, setting forth such matters as the Commission shall by regulation require.

"(f) The provisions of this section shall not extend to a public utility organized and operating in a State under the laws of which its security issues are regulated by a State commission.

"(g) Nothing in this section shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which the provisions of this section relate.

"(h) Any public utility whose security issues are approved by the Commission under this section may file with the Securities and Exchange Commission duplicate copies of reports filed with the Federal Power Commission in lieu of the reports, information, and documents required under section 7 of the Securities Act of 1933 and sections 12 and 13 of the Securities and Exchange Act of 1934.

"RATES AND CHARGES; SCHEDULES; SUSPENSION OF NEW RATES

"SEC. 205. (a) All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

"(b) No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or

in any other respect, either as between localities or as between classes of service.

"(c) Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

"(d) Unless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

"(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of such five months, the proposed change of rate, charge, classification, or service shall go into effect at the end of such period, but in case of a proposed increased rate or charge, the Commission may by order require the interested public utility or public utilities to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require such public utility or public utilities to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and

reasonable shall be upon the public utility, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

"FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSMISSION

"SEC. 206. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

"(b) The Commission upon its own motion, or upon the request of any State commission whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transmission of electric energy by means of facilities under the jurisdiction of the Commission in cases where the Commission has no authority to establish a rate governing the sale of such energy.

"FURNISHING OF ADEQUATE SERVICE

"SEC. 207. Whenever the Commission, upon complaint of a State commission, after notice to each State commission and public utility affected and after opportunity for hearing, shall find that any interstate service of any public utility is inadequate or insufficient, the Commission shall determine the proper, adequate, or sufficient service to be furnished, and shall fix the same by its order, rule, or regulation: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel the public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers.

"ASCERTAINMENT OF COST OF PROPERTY

"SEC. 208. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every public utility, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation, and the fair value of such property.

"(b) Every public utility upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

"USE OF JOINT BOARDS; COOPERATION WITH STATE COMMISSIONS

"SEC. 209. (a) The Commission may refer any matter arising in the administration of this Part to a board to be composed of a

member or members, as determined by the Commission, from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold any hearings. The action of such board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The board shall be appointed by the Commission from persons nominated by the State commission of each State affected, or by the Governor of such State if there is no State commission. Each State affected shall be entitled to the same number of representatives on the board unless the nominating power of such State waives such right. The Commission shall have discretion to reject the nominee from any State, but shall thereupon invite a new nomination from that State. The members of a board shall receive such allowances for expenses as the Commission shall provide. The Commission may, when in its discretion sufficient reason exists therefor, revoke any reference to such a board.

"(b) The Commission may confer with any State commission regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities subject to the jurisdiction of such State commission and of the Commission; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this Act to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

"(c) The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of public utilities. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may upon request from a State make available to such State as witnesses any of its trained rate, valuation, or other experts, subject to reimbursement to the Commission by such State of the compensation and traveling expenses of such witnesses. All sums collected hereunder shall be credited to the appropriation from which the amounts were expended in carrying out the provisions of this subsection.

"PART III—LICENSEES AND PUBLIC UTILITIES; PROCEDURAL AND ADMINISTRATIVE PROVISIONS

"ACCOUNTS, RECORDS, AND MEMORANDA

"SECTION 301. (a) Every licensee and public utility shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act, including accounts, records, and memoranda of the generation, transmission, distribution, delivery, or sale of electric energy, the furnishing of services or facilities in connection there-

with, and receipts and expenditures with respect to any of the foregoing: *Provided, however,* That nothing in this Act shall relieve any public utility from keeping any accounts, memoranda, or records which such public utility may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by licensees and public utilities and may classify such licensees and public utilities and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

"(b) The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of licensees and public utilities, and it shall be the duty of such licensees and public utilities to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books or other accounts, as hereinbefore provided, except insofar as he may be directed by the Commission or by a court.

"(c). The books, accounts, memoranda, and records of any person who controls, directly or indirectly, a licensee or public utility subject to the jurisdiction of the Commission, and of any other company controlled by such person, insofar as they relate to transactions with or the business of such licensee or public utility, shall be subject to examination on the order of the Commission.

"RATES OF DEPRECIATION

"SEC. 302. (a) The Commission may, after hearing, require licensees and public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may, from time to time, ascertain and determine, and by order fix, the proper and adequate rates of depreciation of the several classes of property of each licensee and public utility. Each licensee and public utility shall conform its depreciation accounts to the rates so ascertained, determined, and fixed. The licensees and public utilities subject to the jurisdiction of the Commission shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation other than that prescribed therefor by the Commission. No such licensee or public utility shall in any case include in any form under its operating or other expenses any depreciation or other charge or expenditure included elsewhere as a depreciation charge or other-

wise under its operating or other expenses. Nothing in this section shall limit the power of a State commission to determine in the exercise of its jurisdiction, with respect to any public utility, the percentage rate of depreciation to be allowed, as to any class of property of such public utility, or the composite depreciation rate, for the purpose of determining rates or charges.

"(b) The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation rates, shall notify each State commission having jurisdiction with respect to any public utility involved, and shall give reasonable opportunity to each such commission to present its views, and shall receive and consider such views and recommendations.

"REQUIREMENTS APPLICABLE TO AGENCIES OF THE UNITED STATES

"SEC. 303. All agencies of the United States engaged in the generation and sale of electric energy for ultimate distribution to the public shall be subject, as to all facilities used for such generation and sale, and as to the electric energy sold by such agency, to the provisions of sections 301 and 302 hereof, so far as may be practicable, and shall comply with the provisions of such sections and with the rules and regulations of the Commission thereunder to the same extent as may be required in the case of a public utility.

"PERIODIC AND SPECIAL REPORTS

"SEC. 304. (a) Every licensee and every public utility shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this Act. The Commission may prescribe the manner and form in which such reports shall be made, and require from such persons specific answers to all questions upon which the Commission may need information. The Commission may require that such reports shall include, among other things, full information as to assets and liabilities, capitalization, net investment, and reduction thereof, gross receipts, interest due and paid, depreciation, and other reserves, cost of project and other facilities, cost of maintenance and operation of the project and other facilities, cost of renewals and replacement of the project works and other facilities, depreciation, generation, transmission, distribution, delivery, use, and sale of electric energy. The Commission may require any such person to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies.

"(b) It shall be unlawful for any person willfully to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, memorandum, record, or account required to be made, filed, or kept under this Act or any rule, regulation, or order thereunder.

"OFFICIALS DEALING IN SECURITIES; INTERLOCKING DIRECTORATES

"SEC. 305. (a) It shall be unlawful for any officer or director of any public utility to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation,

hypothecation, or sale by such public utility of any security issued or to be issued by such public utility, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such public utility from any funds properly included in capital account.

"(b) After six months from the date on which this Part takes effect, it shall be unlawful for any person to hold the position of officer or director of more than one public utility or to hold the position of officer or director of a public utility and the position of officer or director of any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility, or officer or director of any company supplying electrical equipment to such public utility, unless the holding of such positions shall have been authorized by order of the Commission, upon due showing in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby. The Commission shall not grant any such authorization in respect of such positions held on the date on which this Part takes effect, unless application for such authorization is filed with the Commission within sixty days after that date.

"COMPLAINTS

"SEC. 306. Any person, State, municipality, or State commission complaining of anything done or omitted to be done by any licensee or public utility in contravention of the provisions of this Act may apply to the Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such licensee or public utility, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission. If such licensee or public utility shall not satisfy the complaint within the time specified or there shall appear to be any reasonable ground for investigating such complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall find proper.

"INVESTIGATIONS BY COMMISSION; ATTENDANCE OF WITNESSES; DEPOSITIONS

"SEC. 307. (a) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of this Act or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this Act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this Act relates. The Commission may permit any person to file with it a statement in writing under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish or make available to State commissions information concerning any such subject.

"(b) For the purpose of any investigation or any other proceeding under this Act, any member of the Commission, or any officer designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing. Witnesses summoned by the Commission to appear before it shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(c) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

"(d) The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition, at any time after the proceeding is at issue. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any person authorized to administer oaths not being of counsel or attorney to either of the parties, nor interested in the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

"(e) If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

"(f) Witnesses whose depositions are taken as authorized in this Act, and the person or officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States.

"(g) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obedience to the subpena of the Commission or any member thereof or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

"HEARINGS; RULES OF PROCEDURE

"SEC. 308. (a) Hearings under this Act may be held before the Commission, any member or members thereof or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission, in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality, or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

"(b) All hearings, investigations, and proceedings under this Act shall be governed by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this Act.

"ADMINISTRATIVE POWERS OF COMMISSION; RULES, REGULATIONS, AND ORDERS

"SEC. 309. The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Among other things, such rules and regulations may define accounting, technical, and trade

terms used in this Act; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

"APPOINTMENT OF OFFICERS AND EMPLOYEES

"SEC. 310. The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this Act, without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States; and the Commission may, subject to civil-service laws, appoint such other officers and employees as are necessary for carrying out such functions and fix their salaries in accordance with the Classification Act of 1923, as amended.

"INVESTIGATIONS RELATING TO ELECTRIC ENERGY

"SEC. 311. In order to secure information necessary or appropriate as a basis for recommending legislation, the Commission is authorized and directed to conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions, whether or not otherwise subject to the jurisdiction of the Commission, including the generation, transmission, distribution, and sale of electric energy by any agency, authority, or instrumentality of the United States, or of any State or municipality or other political subdivision of a State. It shall, so far as practicable, secure and keep current information regarding the ownership, operation, management, and control of all facilities for such generation, transmission, distribution, and sale; the capacity and output thereof and the relationship between the two; the cost of generation, transmission, and distribution; the rates, charges, and contracts in respect of the sale of electric energy and its service to residential, rural, commercial, and industrial consumers and other purchasers by private and public agencies; and the relation of any or all such facts to the development of navigation, industry, commerce, and the national defense. The Commission shall report to Congress the results of investigations made under authority of this section.

"PUBLICATION AND SALE OF REPORTS

"SEC. 312. The Commission may provide for the publication of its reports and decisions in such form and manner as may be best

adapted for public information and use, and is authorized to sell at reasonable prices copies of all maps, atlases, and reports as it may from time to time publish. Such reasonable prices may include the cost of compilation, composition, and reproduction. The Commission is also authorized to make such charges as it deems reasonable for special statistical services and other special or periodic services. The amounts collected under this section shall be deposited in the Treasury to the credit of miscellaneous receipts. All printing for the Federal Power Commission making use of engraving, lithography, and photolithography, together with the plates for the same, shall be contracted for and performed under the direction of the Commission, under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe, and all other printing for the Commission shall be done by the Public Printer under such limitations and conditions as the Joint Committee on Printing may from time to time prescribe. The entire work may be done at, or ordered through, the Government Printing Office whenever, in the judgment of the Joint Committee on Printing, the same would be to the interest of the Government: *Provided*, That when the exigencies of the public service so require, the Joint Committee on Printing may authorize the Commission to make immediate contracts for engraving, lithographing, and photolithographing, without advertisement for proposals: *Provided further*, That nothing contained in this or any other Act shall prevent the Federal Power Commission from placing orders with other departments or establishments for engraving, lithographing, and photolithographing, in accordance with the provisions of sections 601 and 602 of the Act of June 30, 1932 (47 Stat. 417), providing for interdepartmental work.

"REHEARINGS; COURT REVIEW OF ORDERS

"SEC. 313. (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this Act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

"(b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition

praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

"(c) The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

"ENFORCEMENT OF ACT, REGULATIONS AND ORDERS

"SEC. 314. (a) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this Act, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper District Court of the United States, the Supreme Court of the District of Columbia, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this Act or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings under this Act.

"(b) Upon application of the Commission the district courts of the United States, the Supreme Court of the District of Columbia,

and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this Act or any rule, regulation, or order of the Commission thereunder.

"(c) The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

"GENERAL FORFEITURE PROVISION

"SEC. 315. (a) Any licensee or public utility which willfully fails, within the time prescribed by the Commission, to comply with any order of the Commission, to file any report required under this Act or any rule or regulation of the Commission thereunder, to submit any information or document required by the Commission in the course of an investigation conducted under this Act, or to appear by an officer or agent at any hearing or investigation in response to a subpena issued under this Act, shall forfeit to the United States an amount not exceeding $1,000 to be fixed by the Commission after notice and opportunity for hearing. The imposition or payment of any such forfeiture shall not bar or affect any penalty prescribed in this Act but such forfeiture shall be in addition to any such penalty.

"(b) The forfeitures provided for in this Act shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States, brought in the district where the person is an inhabitant or has his principal place of business, or if a licensee or public utility, in any district in which such licensee or public utility transacts business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures under this Act. The costs and expenses of such prosecution shall be paid from the appropriations for the expenses of the courts of the United States.

"GENERAL PENALTIES; VENUE

"SEC. 316. (a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

"(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this Act, or any rule or regulation imposed by the Secretary of War under authority of Part I of

this Act shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding $500 for each and every day during which such offense occurs.

"JURISDICTION OF OFFENSES; ENFORCEMENT OF LIABILITIES AND DUTIES

"SEC. 317. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this Act or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, or order thereunder. Any criminal proceeding shall be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 225 and 347). No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this Act.

"CONFLICT OF JURISDICTION

"SEC. 318. If, with respect to the issue, sale, or guaranty of a security, or assumption of obligation or liability in respect of a security, the method of keeping accounts, the filing of reports, or the acquisition or disposition of any security, capital assets, facilities, or any other subject matter, any person is subject both to a requirement of the Public Utility Holding Company Act of 1935 or of a rule, regulation, or order thereunder and to a requirement of this Act or of a rule, regulation, or order thereunder, the requirement of the Public Utility Holding Company Act of 1935 shall apply to such person, and such person shall not be subject to the requirement of this Act, or of any rule, regulation, or order thereunder, with respect to the same subject matter, unless the Securities and Exchange Commission has exempted such person from such requirement of the Public Utility Holding Company Act of 1935, in which case the requirements of this Act shall apply to such person.

"SEPARABILITY OF PROVISIONS

"SEC. 319. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

"SHORT TITLE

"SEC. 320. This Act may be cited as the 'Federal Power Act'."

Approved, August 26, 1935.

CONTENTS

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement	3
The Government's position before the trial court	4
The respondents' position before the trial court	12
The action of the trial court	16
The action of the Court of Appeals	18
Specification of errors urged by petitioners	18
Summary of argument	19
Argument	20
I. A trial court has power, temporarily and conditionally, to stay a suit for a permanent injunction in that court pending the final disposition of a suit in another federal court involving similar issues of fact and law although not between identical parties, if the court finds the stay necessary to promote the orderly processes of justice and offers the plaintiff an interlocutory injunction during the pendency of the stay	20
A. Introduction	20
B. The Court of Appeals erred in ruling that the trial court has no power to grant a stay where there is not a technical identity of parties and issues	25
C. The Court of Appeals erred in ruling that the stay was for an indefinite period of time	35
D. The Court of Appeals erred in ruling that the trial court is without power to stay a cause before it when the pleadings are not technically closed	37
II. The trial court was not guilty of a manifest abuse of discretion in staying temporarily and conditionally respondents' suits	44
A. The trial court had reasonable ground to believe that the stay of respondents' suits until after the disposition by this Court of the Bond and Share suits will substantially reduce and simplify the issues of law and fact to be tried in respondents' suits	47
B. The trial court had reasonable ground to believe that the Bond and Share suits afford a reasonable basis for a comprehensive and prompt test of the Act	60

100033—36——1

II. The trial court was not guilty—Continued. Page

B. The trial court had reasonable ground—Con.

1. The trial court could reasonably find that the Bond and Share suits afford the basis for a comprehensive test of the Act 60

2. The trial court could reasonably find that the Bond and Share suits afford a prompt test of the Act 61

3. The trial court could reasonably find that the Bond and Share suits afford a more certain test of the Act than do repondents' suits 64

C. The stay, as granted by the trial court, does not expose the respondents to any damage from which a permanent decree of that court could protect them 66

1. Respondents have no right to a permanent decree merely as a vehicle of appeal to a higher court, and they could not appeal a permanent decree in their favor 70

2. A permanent decree of the trial court, just as an interlocutory decree, would have to yield to the law as subsequently declared by this Court in other cases 72

3. Respondents have themselves suggested that temporary injunctions would protect the holding-company interests pending the disposition of test suits 77

4. An interlocutory decree of the District Court affords the respondents as complete protection as a permanent decree of that Court 79

5. The stay as allowed not only gives to the respondents immediately the relief that they have prayed from the trial court, but cannot possibly prejudice or make more difficult the establishment of their alleged rights to permanent relief in the event that the Bond and Share suits do not wholly eliminate the necessity of a trial 83

D. The action of the Government is not less fair or less conducive to the orderly testing of the Act than the action of the respondents 85

Conclusion 97

CITATIONS

Cases: Page

Adkins v. *Children's Hospital*, 261 U. S. 525 71
American Express Co. v. *Mullins*, 212 U. S. 311 77
Ashwander v. *Tennessee Valley Authority et al.*, 297 U. S. 288 .. 9, 71, 82
Burco, Inc. v. *Whitworth et al.*, 81 F. (2d) 721 (C. C. A. 4th, 1936), *cert: den.*, 297 U. S. 724 95
Cates v. *Mayes*, 12 S. W. 51 (Tex. 1889) 41
Charles River Bridge v. *Warren Bridge*, 11 Pet. 420 96
Checker Cab Mfg. Co. v. *Checker Taxi Co.*, 26 F. (2d) 752 (N. D. Ill. 1928) 42
Commonwealth Trust Company v. *Bradford*, 297 U. S. 613 .. 33
Di Giovanni v. *Camden Ins. Assn.*, 296 U. S. 64 25
Dunphy v. *Belden*, 57 Cal. 427 (1881) 41
Enelow v. *New York Life Insurance Co.*, 293 U. S. 379 26
Ex parte La Prade, 289 U. S. 444 ..... 9, 82
Federal Trade Commission v. *Smith*, 1 F. Supp. 247 (S. D. N. Y. 1932) 62
Fourniquet v. *Perkins*, 16 How. 82 36
Friedman v. *Harrington*, 56 Fed. 860 (C. C. Mass. 1893) .. 30
Gordon v. *Ominsky*, 294 U. S. 186 32
Great North Woods Club v. *Raymond*, 54 F. (2d) 1017 (C. C. A. 6th, 1931) 42
Guffey v. *Smith*, 237 U. S. 101 43
Hale v. *Allinson*, 188 U. S. 56 26
Hatch v. *Wallamet Iron Bridge Co.*, 27 Fed. 673 (C. C. Ore. 1886) 75
Jefferson Standard Life Ins. Co. v. *Keeton*, 292 Fed. 53 (C. C. A. 4th, 1923) 42
Jenkins v. *Baker*, 91 App. Div. 400 (N. Y. 1904) 34
Kansas City Southern Railway v. *United States*, 282 U. S. 760 ..... 27, 35
La Prade, Ex parte, 289 U. S. 444 ..... 9, 82
Liberty Warehouse Co. v. *Grannis*, 273 U. S. 70 ..... 9, 82
Loring v. *Marsh*, Fed. Cas. No. 8514 (C. C. Mass. 1864) .. 41
Massachusetts v. *Mellon*, 262 U. S. 447 71
McClellan v. *Carland*, 217 U. S. 268 42
Mercantile Trust Co. v. *Lamoille Val. R. Co.*, Fed. Cas. No. 9432 (C. C. Vt. 1879) 41
Mills v. *Green*, 159 U. S. 651 73
New York Telephone Co. v. *Maltbie*, 291 U. S. 645 72

Cases—Continued. Page

Penn General Casualty Co. v. *Pennsylvania*, 294 U. S. 189 32
Pennsylvania v. *Wheeling & Belmont Bridge Company*, 18 How. 421 73, 76
Pennsylvania v. *Williams*, 294 U. S. 176 31, 43
Perkins v. *Fourniquet*, 6 How. 206 36
Rosenberg v. *Slotchin*, 181 App. Div. 137 (N. Y. 1917) 22, 34
Sliosberg v. *New York Life Insurance Co.*, 244 N. Y. 482 (1927) 83
Spielman Motor Co. v. *Dodge*, 295 U. S. 89 12
Southern Pacific Railroad Company v. *United States*, 168 U. S. 1 77
United States v. *Bank of New York and Trust Company*, 296 U. S. 463 32
United States v. *Swift & Co.*, 286 U. S. 106 77
Wadleigh v. *Veazie*, Fed. Cas. No. 17031 (C. C. Me. 1838) 41
Wallamet Iron Bridge Co. v. *Hatch*, 19 Fed. 347 (C. C. Ore. 1884) 76
Willamette Iron Bridge Co. v. *Hatch*, 125 U. S. 1 76

In the Supreme Court of the United States

OCTOBER TERM, 1936

NOS. 221 AND 222

JAMES M. LANDIS ET AL., PETITIONERS

v.

THE NORTH AMERICAN COMPANY

JAMES M. LANDIS ET AL., PETITIONERS

v.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinions in the United States Court of Appeals for the District of Columbia (AR. 211, NR. 215)[1] were filed June 22, 1936, and are unreported. The opinion of the District Court for the District

[1] In this brief, the record in the American Water Works and Electric Company case is designated AR., and the record in the North American Company case, NR.

of Columbia (AR. 30, NR. 31) was filed January 6, 1936, and is unreported.

JURISDICTION

The judgment to be reviewed was entered on June 22, 1936 (AR. 211, NR. 228). The petition for writs of certiorari was filed July 24, 1936, and was granted October 12, 1936. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

I. *Power.*—Whether the District Court for the District of Columbia has power, temporarily and conditionally, to stay a suit for a permanent injunction in that court, pending the final disposition by the Supreme Court of the United States of a suit instituted in another United States district court involving substantially similar issues of fact and law, although not between the identical parties, if the District Court for the District of Columbia finds the stay necessary to promote the orderly processes of justice and if that court offers the plaintiffs a temporary injunction during the stay.

II. *Abuse of discretion.*—Whether the District Court for the District of Columbia in exercising such power was guilty of an abuse of discretion.

STATUTE INVOLVED

The suits were instituted by the respondents, non-registered holding companies, against the petitioners to enjoin enforcement of the Public Utility

Holding Company Act of 1935 (c. 687, 49 Stat. 803, hereinafter generally referred to as the Act) on the ground that the Act is unconstitutional in its entirety. The provisions of the Act are set forth in the Appendix, separately printed.

STATEMENT

More than forty suits, all having the common purpose of enjoining *in limine* the enforcement of an Act of Congress, had been instituted in various Federal courts throughout the country during November and early December, 1935. Seven of these had been instituted in the District Court for the District of Columbia. Each suit involved questions which would require decision in each of the other suits. The drafting of pleadings and preparation for trials of these cases, each of the magnitude of an important anti-trust action, would necessarily have entailed an elaborate examination of intricate intercorporate relationships, consuming a great amount of time and effort of the courts as well as of the parties.

To avoid the clogging of the court's calendar with a multiplicity of suits prosecuted for a common purpose, and to promote orderly and economical judicial administration, a motion was made on behalf of the petitioners by the Attorney General that the District Court for the District of Columbia should stay its own proceedings in the suits pending before it until a consolidated suit involving substantially the same issues of fact and

law already instituted by the Securities and Exchange Commission (hereinafter generally referred to as the Commission) in another United States district court against certain representative holding companies had been disposed of. The trial court—after satisfying itself that the consolidated suit already begun would completely resolve or very substantially narrow the issues involved in the suits before it, and that the plaintiffs in those suits would be adequately protected in the interim—ordered the proceedings in the suits before it stayed conditionally and temporarily pending the final disposition of the consolidated suit brought by the Commission. The Court of Appeals, with one concurring and one dissenting opinion, reversed the action of the trial court and held in effect that a stay may not be granted in the discretion of the trial court, pending the disposition of another suit, unless the disposition of the suit tried will render the others technically *res adjudicata*.

THE GOVERNMENT'S POSITION BEFORE THE TRIAL COURT

The Government urged before the trial court that the stay of proceedings in the seven suits[2]

[2] The plaintiffs in two of those seven suits are the present respondents. The plaintiffs in four of the other suits have stipulated with petitioners that their suits shall be governed by the disposition of respondents' suits. The plaintiff in the last of the seven suits, after opposing the motion for the stay, ceased to be a holding company within the meaning of the Act, and dismissed its bill of complaint.

filed in that court was necessary to promote the orderly processes of justice for the following reasons:

(1) The terms of section 4 (a) of the Act required certain types of utility holding companies to register with the Commission under section 5 of the Act prior to December 1, 1935, or to refrain from conducting certain kinds of interstate commerce after that date. On December 1, 1935, the Government was confronted with more than forty suits (exclusive of stockholders' suits) filed on behalf of more than one hundred plaintiffs in at least twelve different United States district courts (AR. 77–79, NR 79–81). All of such suits in effect sought to obtain a declaration that the Act was unconstitutional in its entirety and to enjoin the enforcement of the Act against the plaintiff holding companies, none of which had registered under the Act. Seven of these suits had been filed in the District of Columbia, and there was reason to believe that, if the stay were not granted, many other suits would be filed in that District, since virtually all the suits outside of the District of Columbia were jurisdictionally defective as to the petitioners—Government officials resident in Washington—for want of valid service and proper venue (AR. 184–185, NR. 187–188).

(2) While the bills filed against Government officials, including the bills of the present respondents, differed somewhat in detail, all admittedly raised the same fundamental questions of law as

to the validity of the Act (AR. 195–196, NR. 199–200). Each bill admitted that the plaintiff was a holding company within the meaning of the Act and that the Act, if valid, required the plaintiff to register. Although none of the plaintiffs in any of these suits had registered and for that reason none of the specific regulatory provisions applicable solely to registered companies and their subsidiaries was applicable to these plaintiffs, the bills all sought to have the Act in its entirety declared unconstitutional and to have the enforcement of all of its many regulatory provisions enjoined. Although there might be special circumstances affecting a particular company which might, in due course, after the determination of the validity of the registration provisions of the Act, require a judicial determination of the effect of certain specific regulatory provisions of the Act upon that particular company, there was no justification for clogging the calendars and overtaxing the facilities of the courts with complicated and expensive suits when one authoritative decision from this Court could dispose of the major issues of law involved. This was particularly true in light of the fact that the Government had taken every possible precaution to safeguard the rights of the holding companies pending a decision by this Court upon the constitutionality of the Act.

(3) On November 26, 1935, five days before the effective date of the Act, the Commission, pursuant to express authority under section 18 of the Act,

filed a consolidated suit against the Electric Bond and Share Company and the five principal holding companies in the Bond and Share system to compel each of them, *as a holding company in its own right,* to register with the Commission or refrain from certain specified acts in interstate commerce or through the mails. These suits were commenced in the United States Court for the Southern District of New York, the district of the home office of the Bond and Share defendants, before any bills to enjoin enforcement of the Act had been filed in the District Court for the District of Columbia.[3] The Bond and Share system is the best known and one of the oldest of the great public-utility holding-company systems. It controls nearly fifteen per cent of the privately owned electric utility industry in the country. It comes into contact with the Act at more points than any other holding-company system. Moreover, the suit was filed not only against the Electric Bond and Share Company itself but against five of its principal intermediate holding-company subsidiaries as well. Sixteen more holding-company subsidiaries were subsequently added, with the Government's consent, as parties to the suit. Of these twenty-two defendants, thirteen are, by the terms of the Act, required to register with the Commission as hold-

[3] Respondent The North American Company filed its bill later on the same day (NR. 2), and respondent American Water Works and Electric Company filed its bill the following day (AR. 2).

ing companies in their own right; the remaining nine either are not holding companies or are exempt from the Act, as predominantly intrastate companies or as operating companies, by virtue of section 3 (a) (1) and 3 (a) (2).[4] Counsel for the Government informed the trial court that the Bond and Share defendants were preparing an answer and cross-bill which would attempt to contest the validity and enjoin the enforcement of the entire Act in the same manner as the respondents and others were attempting in their suits. Before the Record was made up for appeal, such answer and cross-bill were filed and made a part thereof[5] (AR. 80, NR. 82).

(4) The suits instituted against the non-registered Bond and Share companies would more certainly provide a speedy and effective adjudication of the validity of the Act by this Court than would suits brought by other non-registered companies to

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[4] The Government had also consented to the intervention of five subsidiary companies which are not holding companies but present examples of typical utility and non-utility subsidiaries of a holding company.

[5] By stipulation (AR. 173, NR. 176), the Attorney General, the Postmaster General, and the members of the Securities and Exchange Commission, the defendants in the suits involved in the instant cases, had become cross-defendants to this cross-bill, thereby making all of the defendant-petitioners against whom suits have been instituted in the District of Columbia parties to the Bond and Share suits and ensuring beyond peradventure the right of the Bond and Share companies to contest every provision of the Act and every point of law which could conceivably be raised by the respondents in the suits stayed.

restrain enforcement of the Act and to have it declared a nullity. The suits instituted against the Bond and Share companies were expressly authorized by section 18 of the Act. They were not subject to attack on jurisdictional grounds. In contrast, in the respondents' suits and others brought to restrain enforcement of the Act, the equitable jurisdiction of the court—that is, the justification for application of the extraordinary remedies of equity—was open to serious contest both upon the law and the facts. The disclaimer on the part of Government officials of any intention to prosecute any holding company for violation of the Act raised the question whether there was any case or controversy existing between any holding company and any Government official. *Ex parte La Prade,* 289 U. S. 444; *Liberty Warehouse Co.* v. *Grannis,* 273 U. S. 70; *Ashwander* v. *Tennessee Valley Authority et al.,* 297 U. S. 288. And the failure of the various holding-company plaintiffs to register raised the question whether they could contest the validity of those provisions of the Act which apply by their terms only to "registered" companies.[6] It was therefore not im-

[6] Section 4 (a) of this Act makes it unlawful for certain types of public-utility holding companies after December 1, 1935, to use the mails or channels of interstate commerce to carry on certain activities unless they shall have filed with the Securities and Exchange Commission, as provided in section 5, a notification of registration and thereafter a registration statement containing certain information regarding their activities and intercorporate relationships. Virtually

probable that after protracted trials in the lower court and successive appeals finally reaching this Court the complaints in such suits would be dismissed upon grounds of equitable jurisdiction without any consideration of the substantive constitutional issues.

(5) To present to a court a true picture of the affairs and position of any holding company, it was important that the court should have before it all of the principal companies in the system of which that holding company was a part. The Government had made all the principal holding companies in the Bond and Share system parties defendant to its test suits and had brought the suits in one proceeding in the Southern District of New York, where all of these defendants had their principal places of business and could be served. In contrast to the Government's care in bringing an entire holding-company system before a single court, it was significant that neither The North American Company nor American Water Works and Electric Company, respondents here, had chosen to join all of the principal holding companies in its system in its suit before the trial court, and that other holding companies in each of these systems had actually brought suits outside of the District of Columbia (AR. 39, NR. 40). Likewise,

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all other provisions of the Act by their terms are applicable only to registered holding companies and their subsidiaries, and are not enforceable against holding companies or their subsidiaries unless and until they do register.

the other plaintiffs in the trial court were but parts of holding-company systems which, through other companies, had instituted proceedings outside of the District of Columbia (AR. 39, NR. 41).

(6) To ensure preservation of the rights of all companies subject to the Act during the pendency of the Bond and Share suits, the Government had taken action in three directions. As a first step—taken before any suits were filed in the trial court—the Commission had issued regulations expressly permitting a holding company when registering to reserve any legal or constitutional right and to stipulate that its registration should be void and of no effect in the event that such a reservation should be judged invalid or ineffective (AR. 40, NR. 41). As a second step—taken before any suits were filed in the trial court—the Attorney General and the Commission had announced that the Commission would take prompt steps to test the Act in a civil suit; that until the validity of the Act had been determined by this Court in such a civil suit, neither the Attorney General nor the Commission would seek to enforce the criminal penalties of the Act; and that even after such determination they would not seek to exact penalties for earlier offenses (AR. 40–44, NR. 42–46). As a third step, the Postmaster General had announced that even if he had the authority he would not exclude any company from using the mails because of any violation of the Act pending the judicial determination of its validity by this Court

(AR. 45, NR. 46). These three steps taken by the Attorney General, the Postmaster General, and the Commission, as just described, had made it perfectly clear that, pending an adjudication by this Court on the Act, no company subject to the Act stood in any reasonable fear of any action or threat of action by any Government official.[7]

(7) To safeguard still further the rights of the respondents during the stay, the petitioners offered in the trial court to submit to a temporary injunction or interlocutory decree which would have the same effect during its pendency as a final decree. The Attorney General proposed that "*such temporary decree may take the same form and have the same scope as a final decree, and such temporary decree will not be vacated unless and until this Court is affirmatively satisfied that the decree is not warranted in fact or in law*"[8] (Attorney General's reply brief in the trial court, p. 3).

THE RESPONDENTS' POSITION BEFORE THE TRIAL COURT

(1) The respondents, and the other five plaintiffs in the trial court, opposed the Government's motion for a stay on the technical ground that, unless the parties and the issues in the suits stayed were identical with those in the suits upon which

[7] This Court has recognized that a disclaimer by enforcement officials of any intention to institute prosecutions under a statute pending an adjudication of its validity may remove the necessity for the intervention of a court of equity. *Spielman Motor Co.* v. *Dodge*, 295 U. S. 89.

[8] Italics in quotations supplied unless otherwise noted.

the stay was to be predicated, the court had no power to stay proceedings in the causes before it, or having such power could not exercise it without being guilty of an abuse of discretion.

In support of their contention that the issues in the Bond and Share suits were not identical with the issues in their suits, respondents relied upon the fact that the Government's suits against the Bond and Share companies sought only to require registration under the Act. Despite the fact that all seven plaintiffs in the trial court had alleged in their pleadings that the provisions of the Act were inseparable and void as an entirety (AR. 13, NR. 18), all such companies assumed at the hearing that the provisions of the Act were separable and that the Bond and Share suits would determine only the validity of the registration provisions of the Act—sections 4 (a) and 5 (AR. 26, NR. 26). In reply the Government pointed out that if the provisions of the Act were inseparable as the respondents and other holding companies had asserted in their pleadings, the Bond and Share cases would necessarily determine the validity of the whole Act; and that if the provisions of the Act were separable, as the respondents argued for the purposes of the motion for the stay, the cross-bill of the Bond and Share defendants would raise the validity of just as much of the Act and in the same manner as the respondents had attempted to do in their suits (AR. 203, NR. 207). If the validity of the Act or

any part thereof could be raised by non-registered companies in actions against non-threatening Government officials, it was clear from the first that the Bond and Share companies by their cross-bill, no less than the respondents by their bills, would raise it.

(2) It was further contended by the respondents that because of different factual setups an adjudication that the Act was constitutional as to Bond and Share would not determine the constitutionality of the Act as to them. Respondents contended that their position was wholly different from that of Bond and Share in that (1) respondents did not transmit a substantial amount of energy in interstate commerce; (2) they had no intercompany service contracts the performance of which might be interstate commerce; and (3) they did not actually control their subsidiaries, through service contracts or otherwise, except by exercising their voting rights as stockholders. In reply the Government pointed out that all three of the above contentions were being asserted by one or more of the several defendants in the Bond and Share suits, and that the respondents' own pleadings as well as official documents (AR. 38–39, NR. 39–40) revealed conclusively that the respondents' situation in these respects was no different from that of one or more of the Bond and Share defendants (see pp. 54–59, *infra*).

Whether the Bond and Share suits were ultimately to be decided in favor of or against the Government, a comparison of the pleadings in the Bond and Share suits with the pleadings in the suits stayed demonstrated beyond doubt that the Bond and Share suits would decide whether the registration provisions of the Act were valid; whether such provisions were separable from other provisions of the Act; whether a holding company could be required to register because of acts done by its subsidiary companies in interstate commerce; to what extent the validity or invalidity of other provisions of the Act might operate as a valid defense for failure to register; and to what extent the validity or invalidity of other provisions of the Act applicable by their terms only to registered companies might be raised by non-registered companies in an independent bill or cross-bill in equity. Such a decision would of necessity define the major issues of law and of fact in the suits before the trial court and would eliminate altogether the need of further litigation or substantially reduce its scope.

(3) Respondents further asserted that the stay would cause them "great and irreparable loss and damage" (AR. 29, NR. 31). In reply, the Government pointed out to the trial court that an unappealed final decree, just as an interlocutory decree, would have to yield to any subsequent de-

cision of this Court, and respondents were unable to answer the trial court's repeated question how under these circumstances, respondents would be better protected by a permanent than a temporary decree (AR. 32–33 NR. 34).

(4) Respondents did not venture to assert that the time of the court should be taken up in the trials of even the seven suits already pending in the District of Columbia. They admitted that all the suits brought to contest the validity of the Act were substantially identical (AR. 195, NR. 199). They offered to select for trial three or four test suits and to be content that a temporary injunction should protect other suitors pending the final determination of such test suits by this Court (AR. 193, NR. 197). But the Government pointed out that the respondents had failed to show that such suits would be as broad or as typical or as free from jurisdictional difficulties as the Bond and Share suits; and that the trial court could take cognizance of such suits pending in another district, there certainly being no necessity for a separate test suit in each district.

THE ACTION OF THE TRIAL COURT

The trial court found both the law and the facts against the respondents (AR. 30, NR. 31). It found that a court has power in its discretion to grant a stay in a pending case, not finally but temporarily, if conditioned upon safeguards ade

quately protecting the plaintiff during the period of the stay, for any cause which furthers the orderly processes of justice. It found that the circumstances surrounding these suits constituted such cause. It found that a decision by this Court in the Bond and Share suits, even if it did not dispose of all the questions involved, would afford a speedy adjudication of the validity of the Act and would certainly narrow the issues and assist in the determination of the questions of law involved in the respondents' suits. It found that the plan proposed by the Government would give the respondents all the protection needed pending a decision by this Court and save a great deal of labor, time, and expense. It found in substance that the respondents' proposal to try only three or four of the suits filed in the lower court and to suspend proceedings in the others, did not offer the same assurance of orderly judicial procedure as did the suggestion of the Government; that the respondents could not answer for the forty cases in other districts which might be transferred to the District of Columbia if the stay were not granted.

The trial court accordingly granted the stay and conditioned its grant upon a diligent and active prosecution of the Bond and Share suits. In view of the assurances of the petitioners, given before the filing of respondents' suits and reiterated at the argument, the trial court did not believe a formal

injunction necessary, but offered the respondents the right to that relief if they desired it. Neither of the respondents, nor the plaintiffs in the other suits below, have as yet sought to avail themselves of that right. The respondents approved as to form the order entered by the trial court (AR. 186, NR. 189). The respondents have not since the entry of the stay-order applied to the trial court for a modification or vacation of the order because of any unexpected development or want of progress in the Bond and Share suits or because of any other development or circumstance subsequent to the entry of the stay-order.

THE ACTION OF THE COURT OF APPEALS

The Court of Appeals reversed the order of the trial court on the ground that the discretionary power of the trial court did not extend to the granting of a stay pending the final outcome of another suit if the suits stayed did not involve the same parties and the same issues and if the stayed suits had not yet technically come to issue.

SPECIFICATION OF ERRORS URGED BY PETITIONERS

The Court of Appeals erred:

1. In reversing the order of the District Court for the District of Columbia staying proceedings in the suits before it to contest the validity of the Public Utility Holding Company Act, pending the final disposition of the Bond and Share suits.

2. In holding that the trial court was without discretionary power to stay its own proceedings in any suit, pending the final disposition of another suit, unless under the principles of *res adjudicata* the decision in the other suit would determine all questions in the suit stayed and the judgment in the other suit would dispose of the controversy in both suits.

3. In holding that the trial court was without discretionary power to stay its proceedings pending the final disposition of another suit before the pleadings in the suit before it were technically closed.

4. In holding that the interlocutory decree offered respondents by the trial court would not during its effectiveness protect the respondents as fully as a permanent decree in the trial court.

5. In holding that the trial court had exceeded its discretionary power in staying proceedings in the suits before it, pending the final disposition of the Bond and Share suits.

SUMMARY OF ARGUMENT

In view of the detailed nature of the Statement (pp. 3–18, *supra*), a further Summary of the Argument appears unnecessary.

ARGUMENT

I

A TRIAL COURT HAS POWER, TEMPORARILY AND CONDITIONALLY, TO STAY A SUIT FOR A PERMANENT INJUNCTION IN THAT COURT PENDING THE FINAL DISPOSITION OF A SUIT IN ANOTHER FEDERAL COURT INVOLVING SIMILAR ISSUES OF FACT AND LAW ALTHOUGH NOT BETWEEN IDENTICAL PARTIES, IF THE COURT FINDS THE STAY NECESSARY TO PROMOTE THE ORDERLY PROCESSES OF JUSTICE AND OFFERS THE PLAINTIFF AN INTERLOCUTORY INJUNCTION DURING THE PENDENCY OF THE STAY

A. INTRODUCTION

The trial court did not grant a stay of the instant proceedings as a matter of right but as a matter of discretion. The trial court in its opinion first found that it had power to grant the stay and then found that the stay ought to be granted in order to promote the orderly administration of justice.

The Court of Appeals held, in effect, that a Federal court has no power to stay its own proceedings pending final disposition of another suit involving similar issues of law and fact instituted in the same or another Federal court unless the issues and parties in both suits are identical and the judgment in one suit will be *res adjudicata* in the other, and that in no circumstances may a stay be granted before the pleadings in the suits to be stayed are closed.

The majority of the Court of Appeals did not review the discretion which the trial court exer-

cised. It is true that there are suggestions in the prevailing opinions reflecting upon the propriety of the trial court's exercising its discretion in the present cases in favor of a stay; but the majority did not actually review the circumstances which influenced the trial court's discretion, because under their view of the law such circumstances were irrelevant. The majority simply found that the discretion of the trial court did not extend to the granting of a stay pending the final disposition of another suit where the parties and issues are not technically identical or to the granting of a stay where the pleadings are not formally closed and issue technically joined. Neither of the prevailing opinions in the Court of Appeals questioned the finding of the trial court that "a decision by the Supreme Court in the Electric Bond and Share case, even if it should not dispose of all the questions involved, would certainly narrow the issues in the pending cases and assist in the determination of the questions of law involved" (AR. 33, NR. 34), or that the stay would "save great amount of labor, time and expense" (AR. 33, NR. 35) for the courts and all parties.

While Justice Van Orsdel and Justice Groner in writing for the majority of the Court of Appeals stated that the trial court had wide discretionary power in the matter of granting continuances and of determining the order in which cases pending on its docket should be tried, a careful reading of

their opinions can leave no doubt that *their reversal of the trial court was based on the ground, not that the trial court had unreasonably exercised its discretion, but that it had acted in a matter to which its discretionary power did not extend.*

Justice Van Orsdel stated that "this power [the discretionary power of the trial court] extends to the determination of which of two cases, pending in the same court or in courts of similar jurisdiction and involving *the same issues and the same parties,* shall be first heard, *but this situation does not obtain in the present controversy*" (AR. 214, NR. 217). Justice Van Orsdel expressly stated "the stay cannot be justified on the ground that the decision in the Bond & Share case may 'simplify' the issues," not because the issues might not be simplified, but because "it is difficult to conclude that a decision of the Bond and Share case would dispose of *all* the issues in the present cases" (AR. 214, NR. 218). And he expressly applied a rule stated in *Rosenberg* v. *Slotchin,* 181 App. Div. 137, 138 (N. Y. 1917), that "it is only where the decision in one action will determine all the questions in the other action, and the judgment on one trial will dispose of the controversy in both actions that a case for a stay is presented" (AR. 214, NR. 218). He also cited the *Rosenberg* case as "authority for the rule that under no circum-

stances will a stay in an action be granted until the issues are made" (AR. 214, NR. 218).

Justice Groner likewise considered it ground for reversal "that a decision in the one case will not foreclose all questions in the other" and stated that "the order entered by the lower court is not such a stay-order as a court ought ever to enter as a matter of discretion" (AR. 216, NR. 220), giving as his reasons the fact that the stay was granted "for an indefinite period" and "where the parties are different and the rights and interests not identical" (AR. 217, NR. 220). Justice Groner also found error in the trial court's action because "the motion was made without bringing the case to issue" (AR. 217, NR. 220).

Justice Stephens, in his dissenting opinion, rejected the proposition that the trial court's discretion was limited by any rigid, technical requirement, reviewed at length all the considerations which might have influenced the trial court's discretion, and concluded that the trial court's decision was reasonable.

The differences among the justices in the Court of Appeals must therefore be ascribed to their disagreement as to the rules which define the limits within which the trial court has power to exercise its judicial discretion.

The effect of the decision of the Court of Appeals is to oblige a trial court to proceed, either

simultaneously or in succession, with the trial of a multitude of similar suits brought for a common purpose, without permitting the trial court to await the outcome of an appeal to this Court in one suit which promises to eliminate the need of any further litigation or at least to obviate the necessity of long and protracted trials and successive appeals. The decision prevents the trial court from adopting a procedure which will conserve much time, labor, and expense, even though such procedure is attended by appropriate safeguards reasonably calculated to protect the substantive rights of all litigants. The decision of the Court of Appeals makes it impossible for the Government, or any other defendant against whom substantially similar actions have been brought by different plaintiffs, to avoid preparing and trying a multiplicity of almost identical suits, although the trial of one representative suit followed by an appeal to this Court would eliminate the burden and expense to the courts and to the litigants of a score of suits. It limits the control of the trial court over its own process by a fixed and arbitrary rule bearing no relation to the orderly and economical administration of justice.

It is the position of the Government that the Court of Appeals erred in so circumscribing the power of the trial court with rigid requirements that the issues and parties be technically identical and that the pleadings be formally closed.

B. THE COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT HAS NO POWER TO GRANT A STAY WHERE THERE IS NOT A TECHNICAL IDENTITY OF PARTIES AND ISSUES

The decision of the Court of Appeals that the power of the trial court to stay a suit before it pending the disposition of another suit is limited to suits "involving the same issues and the same parties" (AR. 214, NR. 217) is in direct conflict with the authoritative decisions of this Court. While it is true that one of the most frequent uses of the stay has been to prevent a multiplicity of suits between the same parties in respect of the same issues, the decisions of this Court demonstrate that there is no narrow, technical rule that the issues and parties must be identical in all respects in each suit in order that the proceedings in one suit may be stayed or postponed until after the disposition of another suit.[9] The power of a court

[9] Even when an independent bill is brought seeking affirmative relief in equity to enjoin a multiplicity of suits, there is no rigid rule that the parties or issues must be identical. *Di Giovanni* v. *Camden Ins. Assn.*, 296 U. S. 64, 70. In the *Di Giovanni* case Mr. Justice Stone stated (296 U. S. at 70): "Avoidance of the burden of numerous suits at law between the same or different parties, where the issues are substantially the same, is a recognized ground for equitable relief in the federal courts. See *Ogden City* v. *Armstrong*, 168 U. S. 224; *Hale* v. *Allinson*, 188 U. S. 56. But the award of this remedy, as of other forms of equitable relief, is not controlled by rigid rules rigidly adhered to regardless of the end to be attained and the consequences of granting the relief sought. It rests in the sound discretion

to grant a stay of a suit before it pending the outcome of another suit is an incident of a court's "inherent power to control the progress of the cause so as to maintain the orderly processes of justice." *Enelow* v. *New York Life Insurance Co.*, 293 U. S. 379, 382.

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of a court of equity and a theoretical inadequacy of the legal remedy may be outweighed by other considerations."

Mr. Justice Peckham stated in *Hale* v. *Allinson*, 188 U. S. 56, 78: "We are not disposed to deny that jurisdiction on the ground of preventing a multiplicity of suits may be exercised in many cases in behalf of a single complainant against a number of defendants, although there is no common title nor community of right or interest in the subject matter among such defendants, but where there is a community of interest among them in the questions of law and fact involved in the general controversy."

It is true that an independent bill to enjoin a multiplicity of suits in other courts is quite different from a mere stay of proceedings pending the disposition of a suit in another court. An independent bill to enjoin a multiplicity of suits takes the suits enjoined finally away from the jurisdiction of the other courts and usually requires them to be tried in one consolidated proceeding. Yet despite the difficulties present in a consolidated trial involving different causes of action between different parties, there is, as the decisions of this Court show, no rigid rule that an independent bill cannot be maintained in equity to avoid a multiplicity of suits where the parties and issues are not the same. But a mere stay of proceedings pending the disposition of another case involves no such trial difficulties nor does it affect the jurisdiction of any other court. The identity of issues and parties need not, therefore, bulk so large in the exercise of the court's discretion in staying *its own* proceedings, and the court, in exercising its discretion, has much more latitude to consider the interests of the parties and the economies of competing procedures.

In *Kansas City Southern Railway* v. *United States*, 282 U. S. 760, this Court clearly indicated that the use of the stay, by a court in respect of its own proceedings (as distinguished from affirmative relief against proceedings in another court), to prevent needless multiplicity of suits by *different* parties against the Government, pending the final disposition of a suit begun in another Federal district, rests in the sound discretion of the trial court. The *Kansas City Southern* case involved two general orders of the Interstate Commerce Commission which were applicable to all interstate carriers coming within their terms. The orders related to the movement of cars of one carrier upon the lines of another. One group of carriers attacked the orders in the United States District Court in Kentucky. Another group of carriers attacked the orders in the United States District Court in Missouri. After a decree in favor of the Interstate Commerce Commission had been rendered in the Kentucky case, the Government amended its answer in the Missouri court setting up the decree in the Kentucky court as an affirmative defense equivalent to a plea in abatement. On appeal from a decision of the Missouri court refusing the Government's plea, this Court held that, while the Missouri court could not be deprived by a plea in abatement of jurisdiction once it had been properly invoked, the Government's plea, considered as a request to the Missouri court to stay its

own hand, could properly have been granted. Since, however, the stay was not seasonably urged, this Court refused to overrule the Missouri court's exercise of discretion in denying the stay. Mr. Chief Justice Hughes stated (282 U. S. at 763–764):

> *We find no provision of the applicable statutes which deprives a District Court of jurisdiction of a suit brought by a party entitled to attack an order of the Interstate Commerce Commission in accordance with these provisions as to venue. But the existence of jurisdiction does not mean that it must be exercised and that grounds may not be shown for staying the hand of the Court.* Compare *Langnes* v. *Green, ante,* p. 531. The appellants, upon proper application could have been allowed to intervene in the earlier suit brought for the same purpose in the District Court for the Western District of Kentucky (U. S. C., Tit. 28, Sec. 45a) and could have presented there all of their grounds of attack upon the orders in question. The orders of the Interstate Commerce Commission may apply throughout the country, and there may be cases where the convenience of the parties and the interests of justice may make appropriate separate suits by different parties affected by the same order. *The question is thus one for the sound discretion of the District Court, in which such a suit is brought, to*

determine whether it should be permitted to continue or proceedings therein should be stayed, pending the final outcome of an earlier suit for the same purpose, to the end that there may not be a multiplicity of suits without substantial reason. As, however, the defendants here did not raise the question of the pendency of the earlier suit until the day of final hearing, several months after the suit was begun, we see no reason for disturbing the action of the District Court in this respect.[10]

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[10] It is true, as respondents pointed out to the Court of Appeals, that by special statute the plaintiff carriers in the Missouri proceeding would have been entitled to intervene in the Kentucky proceeding. This Court did not, however, suggest that the existence of a right to intervene was a prerequisite of the power of the trial court to grant a stay. This Court discussed the privilege of intervention only by way of taking due cognizance of the Government's point that such privilege was a reason for treating the Kentucky decree as a *bar* to the Missouri suit. This Court ruled in effect that although the orders of the Interstate Commerce Commission might apply throughout the country, and there might be cases where the convenience of the parties and the interests of justice might make appropriate separate suits by different parties affected by the same order, the right to intervene in distant proceedings was a statutory privilege which was not intended to compel intervention or to prejudice the right of the carriers to institute separate proceedings in their domiciliary jurisdiction, to protect their own interests.

But this Court did not say that the separate suits which the carriers had a right to institute—and which might in the circumstances have been appropriately instituted in their domiciliary jurisdictions—could not be *stayed* pending the final disposition of a similar suit brought by different

The order of the Interstate Commerce Commission attacked in the *Kansas City Southern* case affected many different railroads and was thus similar in its effect to the Holding Company Act, which affects many different utility holding companies. The incidence of the same order of the Interstate Commerce Commission upon one railroad may be quite different from its incidence upon another railroad differently circumstanced. Yet there can be no question, since the *Kansas City Southern* case, that a suit in one court contesting the validity of an order of the Interstate Commerce Commission may, in the discretion of that court, be stayed pending the final disposition of another suit begun in a different court by a different plaintiff to contest the validity of the same order as applied to it.[11]

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carriers in a different jurisdiction. To the contrary, this Court took care to indicate that while such suits were not *barred* they could be *stayed*. It is particularly significant that this Court did not confirm, although it might have confirmed, the action of the trial court on the technical ground that the Government had no right to plead in abatement the decree in the earlier suit between different parties. To the contrary, this Court considered the Government's plea as a request for a stay, and confirmed the action of the trial court on the broader ground that such action was a proper exercise of its discretion in refusing a stay not seasonably requested.

[11] In *Friedman* v. *Harrington*, 56 Fed. 860 (C. C. Mass. 1893), the circuit court for Massachusetts granted a stay in a suit before it under circumstances almost identical with those which confronted the trial court in the instant proceeding. In the *Friedman* case, the plaintiffs sued state officers to restrain the enforcement of a statute designed to limit, if not completely abolish, the oleomargarine trade in the state.

In the recent case of *Pennsylvania* v. *Williams*, 294 U. S. 176, this Court went so far as to emphasize that a refusal by a trial court to stay its own hand will constitute an abuse of discretion if such refusal would be prejudicial to the public interest. Mr. Justice Stone stated (294 U. S. at 185):

> *A court of equity, which in its discretion may refuse to protect private rights when the exercise of its jurisdiction would be prejudicial to the public interest,* see *Greathouse* v. *Dern*, 289 U. S. 352, 359, 360, or deny relief upon performance of a condition which will safeguard the public interest

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The plaintiffs were wholesale dealers in oleomargarine, sold only in the original packages in which they were brought into the state. The statement was made by the attorney general representing the defendants, and not denied by the plaintiffs, that no prosecution had been brought under the law against a dealer in the original packages, and it was not proposed to bring any until the constitutionality of the law had been passed upon by the Supreme Court in certain test cases. The circuit court stayed the case on the ground that two similar suits, testing the statute as applied to the business of *other* plaintiffs, were pending before the Supreme Court. The court stated that "as this question can only be settled by a decision of the Supreme Court, I must decline to pass upon the question at this time, and direct that the case be continued until the next term of this court" (56 Fed. at 861). The court stressed the point that the stay could not hurt the plaintiffs because the state officials did not propose to enforce the law against sales in the original package until the constitutionality of the Act was settled—a situation exactly analogous to the announced intentions of the Government in respect of the enforcement of the Holding Company Act during the pendency of the Bond and Share suits.

> and secure substantial justice to the complainant, see *Harrisonville* v. *Dickey Clay Co.*, 289 U. S. 334, 338, *would seem bound to stay its hand in the public interest where it reasonably appears that the private right will not suffer.*

The words of Mr. Justice Stone are particularly applicable to the present suits, where the interlocutory decree offered the respondents ensures that their private rights will not suffer (see pp. 66–85, *infra*). See also *Gordon* v. *Ominsky*, 294 U. S. 186; *Penn General Casualty Co.* v. *Pennsylvania*, 294 U. S. 189.

This Court has further held that in appropriate circumstances a federal court may be required even to relinquish its jurisdiction in favor of other proceedings. As Mr. Chief Justice Hughes stated in *United States* v. *Bank of New York and Trust Company*, 296 U. S. 463, 480:

> The statutory grant of jurisdiction to the District Court leaves open the question of the propriety of its exercise in particular circumstances. Even where the District Court has acquired jurisdiction prior to state proceedings, the character and adequacy of the latter proceedings in relation to the administration of assets within the State, and the status of those assets, may require in the proper exercise of the discretion of the federal court that jurisdiction should be relinquished in favor of the state administration. *Pennsylvania* v. *Williams*,

294 U. S. 176, 185; *Gordon* v. *Ominsky*, 294 U. S. 186, 188; *Penn General Casualty Co.* v. *Pennsylvania*, *supra*, p. 197. * * *

Certainly if the orderly administration of justice may in proper circumstances require a district court to relinquish its jurisdiction, there is no arbitrary rule which denies a district court the right in a proper exercise of its discretion to stay its own proceedings to obviate the necessity of protracted trials and successive appeals, if that discretion is exercised with fullest regard for both the public and private interests involved.[12]

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[12] There is nothing in *Commonwealth Trust Company* v. *Bradford*, 297 U. S. 613, cited by respondents in their answer to the petition for the writs of certiorari, which qualifies the rule of discretion enunciated by this Court in the cases above referred to. In the *Commonwealth Trust Company* case, a receiver for an insolvent national bank, which prior to the receivership had held as trustee for itself and the holders of participation certificates a pool of certain real estate mortgages, had brought a suit for an accounting in the Federal district court against the successor-trustee of the mortgage pool. The successor-trustee had been appointed by a state court of appropriate jurisdiction with the consent of the receiver who had desired to relinquish control of the mortgage pool. But the mortgage pool was not insolvent; and the assets of the pool were in the possession of the successor-trustee and not in *custodia legis*. There being no suit for accounting pending in the state court, the successor-trustee could not and did not ask for a stay, but sought a dismissal of the Federal suit to force the receiver to bring his suit for an accounting in the state court. Since the Congress had expressly given the receiver the right to bring his suit for an accounting in the Federal court, and since there was nothing in the record to indicate that the matter was being, or could more appropriately be, litigated in another forum, the mo-

The prevailing opinions of the Court of Appeals passed over these authoritative decisions of this Court and relied on language from two opinions of an inferior New York court, which announce the rule that a trial court under New York practice is without power to grant a stay-order pending the final disposition of another suit unless the pleadings in the suit to be stayed are technically closed *and* unless the issues and parties are so identical that a final judgment in the one suit will be *res adjudicata* in the other. *Rosenberg* v. *Slotchin*, 181 App. Div. 137 (N. Y. 1917); *Jenkins* v. *Baker*, 91 App. Div. 400 (N. Y. 1904). Such application of rigid, technical rules to the power of a Federal court to grant a stay is contrary to the decisions of this Court and to the basic principles which this Court has evolved to ensure the power of the Federal courts to control the orderly processes of justice. Whether the pleadings have or have not been technically closed, whether any of the parties will or will not suffer material injury from the stay, the decision of the Court of Appeals, if not modified, will deprive the District Court for the District of Columbia of all power and discretion to control its

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tion to dismiss was denied by the trial court and the denial was affirmed both by this Court and the circuit court of appeals. The opinion of this Court in the *Commonwealth Trust Company* case casts no doubt upon the power of a Federal court, upon a proper showing, to stay its own proceedings pending a litigation in a state court, just as it has always had the power, upon a proper showing, to stay its own proceedings pending litigation in another Federal court.

own calendar to prevent numerous trials involving similar issues of law and fact whenever all the parties and issues are not technically identical.

C. THE COURT OF APPEALS ERRED IN RULING THAT THE STAY WAS FOR AN INDEFINITE PERIOD OF TIME

The prevailing opinions of the Court of Appeals are further in direct conflict with the opinion of this Court in *Kansas City Southern Railway* v. *United States,* 282 U. S. 760, in so far as such opinions suggest that the stay was improvidently granted because it was "for an indefinite period of time" (AR. 214, NR. 217). Justice Groner, in his concurring opinion, dwells particularly upon the "indefinite" character of the stay. He expressly states that "the order entered by the lower court is not such a stay-order as a court ought ever to enter as a matter of discretion" and that the stay-order was not "temporary" but "for an indefinite period," and was therefore "substantially an injunction against these plaintiffs" (AR. 216–217, NR. 220). Yet, the very type of stay-order which Justice Groner found defective, this Court expressly stated would be proper in the *Kansas City Southern* case—that is, a stay "pending the final outcome" of another suit. The stay took the only form it could have taken to accomplish its purpose—that is, the avoidance of unnecessarily long and burdensome litigation in numerous suits of a similar nature and having a common purpose.

The stay, being interlocutory, was at all times within the control of the trial court to vacate or revise for any good cause (*Perkins* v. *Fourniquet,* 6 How. 206, 209, *Fourniquet* v. *Perkins,* 16 How. 82, 85), and its indefiniteness, if there were any, was an indefiniteness dictated by the vigilance of the trial court to stand ready at all times to alter or vacate the stay as justice might require, to adjust its decree to the exigencies of the situation, and to protect the interests of the litigants to the fullest extent.

As Justice Stephens stated in his dissenting opinion in the Court of Appeals (AR. 221–222, N.R. 225):

> As to the length of the stay, it is suggested that it is never to end except upon the determination in the New York suit of the validity of the Act by the Supreme Court of the United States, or until the termination of that suit otherwise. The stay motion was in such terms, literally, made, but it was not in such terms granted. * * * The opinion indicates that the stay was granted for a definite purpose and upon definite conditions. The purpose was the saving of a "great amount of labor, time, and expense" through a prior decision in the New York suit, which "even if it should not dispose of all the questions involved, would certainly narrow the issues in the pending cases and assist in the determination of the questions

> of law involved."[13] The conditions were "a diligent and active prosecution of the Electric Bond and Share case." * * * The order is interlocutory in nature and therefore remains within the control of the court which made it. If, during the progress of the New York suit it is made to appear to the trial court that the purpose of the stay will not be served, or that its conditions are not being fulfilled, the trial court may, and I think it should be assumed will, terminate the stay.

D. THE COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT IS WITHOUT POWER TO STAY A CAUSE BEFORE IT WHEN THE PLEADINGS ARE NOT TECHNICALLY CLOSED

The holding of the Court of Appeals that the trial court is without power to grant a stay in a suit before it when the pleadings are not technically closed, finds no support in the decisions of this Court and is contrary to sound equity practice. But in any event, the time of the granting of the stay goes not to the question of the power of the trial court but to the question of the reasonableness of the exercise by the trial court of its discretion. So long as the trial court and the litigants are fully

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[13] [Justice Stephens' footnote] "Presumably the court had in mind the saving of labor, time and expense not only for the parties and counsel but also for itself, a court of the same sovereignty as, and a court of parallel jurisdiction with, the United States District Court for the Southern District of New York."

informed of the issues in the cause, whether by technical pleadings or otherwise, and can thereby fully compare the cause with the case in the other court, there can be no reason in equity for holding that a request for a stay is premature. Equity looks to the substance and not to the form. To have waited until the pleadings were actually closed would have added nothing to the proceeding.

The detailed allegations of each of respondents' long and complicated bills, in so far as they related to the particular holding-company system of each plaintiff, could not have been intelligently answered and countered by cross-bills by the Government without careful and long investigation and study. Hasty answers to these bills could have been no more than general denials. Indeed, had the Government asked for time to investigate the facts in order to frame full and adequate answers and cross-bills before requesting the stay, it might later have been met with the objection which was decisive in the *Kansas City Southern* case, *supra*—to wit, that the stay had not been seasonably requested. Far from being premature in its motion for a stay, the Government carefully followed the procedure indicated by this Court in the authorities upon which the Government relied.

Moreover, the Government carefully detailed to both the trial and appellate courts the issues which would be raised in respondents' suits, and referred both courts to carefully prepared official, governmental reports and documents to indicate that the

issues discussed by the Government were put forward in good faith and were not merely contentious. The respondents at no time suggested that there had not been a complete and adequate statement of the issues. In fact, the issues were more fully detailed and explained to the trial court in the Government's and respondents' arguments and briefs than would have been possible in any formal pleading.[14]

The conclusion is inescapable from the authoritative decisions which we have reviewed that the *power* of the trial court to grant a temporary and conditional stay is not limited by the narrow or technical rules prescribed by the decision of the Court of Appeals in this proceeding. The recent decisions of this Court indicate that the granting

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[14] As Justice Stephens stated in his dissenting opinion in the Court of Appeals (AR. 219–220, NR. 223): "In the technical sense the pleadings were not closed; that is to say, at the time the motion to stay was presented to the trial court, no answers had been filed in either the local suits or in the suit in New York. But it is to be borne in mind that the stay was not asked for upon the ground that a decision in the New York suit would, in the technical sense, be res judicata as to the local suits. This it could not be, for lack of technical identity of parties. The proposition advanced was that the rulings in the New York suit would be practically fruitful to simplify, if not to dispose of, the local litigation. In this view I think formal answers are not the only data which a court may properly consider in reaching a conclusion. It may consider oral representations and documents, apparently informative and reliable. Such data the trial court had before it through the Attorney General, counsel for the Commission, and the plaintiffs' counsel."

of a stay rests in the sound discretion of the trial court, a discretion to be exercised with care and with caution, but with regard to the substantial requirements of justice, and not in accordance with any rigid rule. A court, of course, may not lightly grant a stay which would hurt, prejudice, or delay the rights of the party stayed to the decree or judgment which he seeks. But questions of choice of a proper forum, avoidance of a multiplicity of suits, identity of parties and of issues, closing of pleadings, order of trial of related issues, and numerous other problems affecting the orderly processes of justice are not matters of rule but of judgment. There certainly is no rule in the Federal courts today which makes it impossible for a court, particularly a court of equity, temporarily and conditionally to stay its *own* proceeding if it has reason to believe that by so doing it will, without substantial hurt or prejudice to the parties, obviate the need of fruitless and burdensome litigation or of unnecessarily long and protracted trials.[15]

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[15] THE CASES RELIED UPON BY THE RESPONDENTS ARE NOT APPLICABLE—

As against the recent authoritative decisions of this Court discussed by the Government, respondents in the Court of Appeals cited a number of opinions in the state and lower Federal courts. Analysis of these cases demonstrates that the decisions in most of them may be clearly supported as a proper exercise of the court's discretion in the particular circumstances involved. As Justice Stephens observed in his dissenting opinion below, "they differ so substantially in their facts from the instant problem that they do not constitute persuasive rulings" (AR. 223, NR. 227). Respond-

ents' reliance is chiefly upon *dicta* in these cases, which upon examination are found either to be inapplicable to a proceeding like that at bar or to have been based upon doctrines expressly disavowed by this Court.

The opinions upon which respondents placed most reliance date back fifty and seventy and a hundred years. The orderly disposition of judicial business today involves quite different considerations than it did fifty and a hundred years ago when litigation was of a particularly local character and travel and communication slow and cumbersome. Procedural questions as they were presented to a Maine Circuit Court in 1838 (*Wadleigh* v. *Veazie*, Fed. Cas. No. 17031 (C. C. Me. 1838)), a Massachusetts Circuit Court in 1864 (*Loring* v. *Marsh*, Fed. Cas. No. 8514 (C. C. Mass. 1864)), a Vermont Circuit Court in 1879 (*Mercantile Trust Co.* v. *Lamoille Val. R. Co.*, Fed. Cas. No. 9432 (C. C. Vt. 1879)), a California court in 1881 (*Dunphy* v. *Belden*, 57 Cal. 427 (1881)), or a Texas court in 1889 (*Cates* v. *Mayes*, 12 S. W. 51 (Tex. 1889)), afford little guidance to a modern equity court. Indeed, where, as in certain of these early cases, the term "stay" meant a plea in abatement, the opinions confuse rather than illuminate the issue (*Wadleigh* v. *Veazie*, Fed. Cas. No. 17031 (C. C. Me. 1838), *Loring* v. *Marsh*, Fed. Cas. No. 8514 (C. C. Mass. 1864)).

Moreover, virtually every case cited by respondents below was brought to recover money or property; while the present suits are brought, and can be brought, solely for protection against future conduct of Government officers. In each case cited by respondents below, the court was asked to rule that one party must wait until some other time for relief to which it might have a present right. In the instant cases, however, the protection requested has been already granted. This basic distinction between a suit to recover property and one to obtain protection against future conduct—a protection fully accorded by a stay coupled with an interlocutory injunction—is a difference too great to be spanned by mere numbers of cases.

The Federal opinions upon which respondents relied before the Court of Appeals concern primarily questions involving the concurrent jurisdiction of state and federal

courts. For years the lower Federal courts applied a rule that they could in no case stay their jurisdiction in favor of the jurisdiction of a state court unless the proceeding were one *in rem* and the state court already had possession of the property. Recent decisions of this Court, however, have authoritatively established that these questions of concurrent jurisdiction are matters of discretion—not matters of power. Furthermore, in a recent decision in which the earlier rule of *power* was followed, the Circuit Court of Appeals for the Sixth Circuit expressly recognized that the rule was limited to cases involving the concurrent jurisdiction of state and federal courts as distinguished from courts of a single sovereign. *Great North Woods Club* v. *Raymond*, 54 F. (2d) 1017 (C. C. A. 6th, 1931). Thus, the federal precedents upon which respondents relied are without weight in this proceeding because they proceeded upon the early doctrine that a Federal court has no power either to abdicate or defer its jurisdiction in favor of a state court—a doctrine now discredited by this Court and further inapplicable to a proceeding like the present where the question is one regarding the jurisdiction of two Federal courts.

The recent cases clearly show the progress of Federal courts from *rule of thumb* to *exercise of discretion* in the matter of granting stays pending litigation in another forum. In *McClellan* v. *Carland*, 217 U. S. 268, this Court held that the granting of a stay by a Federal court pending litigation in a state court was an abuse of discretion, remediable by mandamus, but in remanding the case expressly authorized the circuit court of appeals to consider the special circumstances which may have moved the trial court in granting the stay. Yet a number of lower Federal courts in decisions cited by respondents (*Checker Cab Mfg. Co.* v. *Checker Taxi Co.*, 26 F. (2d) 752 (N. D. Ill. 1928), *Jefferson Standard Life Ins. Co.* v. *Keeton*, 292 Fed. 53 (C. C. A. 4th, 1923)), overlooked the qualification regarding special circumstances that this Court affixed to its decision in the *McClellan* case and proceeded on the earlier doctrine of lack of power adopted by the Court of Appeals in the instant proceeding. This Court accordingly, in recent years, has had expressly to discredit the doctrine of these cases cited by respondents and to make

it clear that the *McClellan* case is not to be construed as limiting a court's discretion in appropriate circumstances to stay its hand in favor of a state court. In *Pennsylvania* v. *Williams*, 294 U. S. 176, this Court had to reverse a unanimous opinion of a circuit court of appeals as well as the decision of a district judge (72 F. (2d) 509) for failure to relinquish jurisdiction in favor of a state proceeding in appropriate circumstances. Most of the decisions of the lower federal courts relied upon by respondents below are consequently so entangled with questions regarding the concurrent jurisdiction of Federal and state courts as to have no real bearing on the issues before this Court.

State decisions on pleading and procedure turn so much upon local statutes and local practice that they have never been given much, if any, weight out of their own jurisdiction. The Conformity Act by its terms exempts "equity and admiralty causes" (28 U. S. C. 724), and this Court has many times asserted that the rules of procedure in a Federal equity court "are not determined by local laws or rules of decision, but by general principles, rules and usages of equity having uniform operation in those courts wherever sitting." *Guffey* v. *Smith*, 237 U. S. 101, 114. State authorities are particularly inapplicable where, as here, they are cited to rebut authoritative pronouncements of this Court. Federal equity courts have always kept their rules free from the technicalities of state procedure and have done equity according to their own understanding of that term.

II

THE TRIAL COURT WAS NOT GUILTY OF A MANIFEST ABUSE OF DISCRETION IN STAYING TEMPORARILY AND CONDITIONALLY RESPONDENTS' SUITS

In the instant proceedings, the trial court, after reaching the conclusion that it had the *power* upon a sound exercise of its discretion to stay its own proceedings, did not grant the Government a stay as a matter of right, but weighed with care conflicting considerations of a complicated character and competing interests of public and private right (see pp. 16–18, *supra*).

The majority of the Court of Appeals, however, did not examine carefully into the considerations and interests which had moved the District Court in the exercise of its discretion because under their view of the law it was not necessary to determine whether there had been a manifest abuse of that discretion. As Justice Groner stated very succinctly in his opinion: "But I mention these matters merely in passing. In my opinion the order entered by the lower court is not such a stay-order as a court ought ever to enter as a matter of discretion" (AR. 216, NR. 220). Justice Stephens in his dissenting opinion reviewed the considerations which moved the trial court and concluded not only that the Record was barren of any proof which would justify a reversal on the ground that

the trial court had unreasonably or arbitrarily exercised its discretion, but that the Record showed that (AR. 224, NR. 227):

> The decision of the trial court—permitting an adequate and comprehensive test of an act the meaning and constitutionality of which it was important to the public at large to have determined, but permitting this upon terms which gave to the plaintiffs in large part what they would have gained by immediate and successful trial of their causes (thereby minimizing the consequence of postponement thereof), probably saving the parties and counsel and the courts much duplication of labor and expense, and keeping the Supreme Court of the District of Columbia free to carry on, in the usual course, its general judicial business—was a reasonable decision, properly within the scope of the trial court's discretion.

Unless a trial court has appropriate power to control the progress of cases before it to maintain the orderly processes of justice, judicial administration passes from the control of the trial court and becomes subject to skillful manipulation and abuse. If rules of procedure are to be flexible and adjustable to the varying demands of modern litigation, the trial court must of necessity have broad discretion, and the judgment of the trial court in matters of procedure should not be reversed unless the record reveals manifest error. It is not the

accepted practice in the Federal courts for the appellate court to review the exercise of the trial court's discretion as upon a trial *de novo*; the sole question for the appellate court is whether upon the record there has been a manifest abuse of discretion. It is not the practice for an appellate court to substitute its own discretion for that of the trial court. Discretion necessarily involves some scope for judgment on matters as to which there is room for reasonable difference of opinion. And the judgment of the trial court in exercising its discretion ought not to be disturbed unless that judgment at the time it was made was clearly unreasonable or arbitrary.

In determining whether the action of the trial court constituted a manifest abuse of discretion, this Court should find it helpful to examine into the following questions as bearing upon the reasonableness of the discretion which the trial court exercised. Those questions are therefore discussed in this Part II of the Argument in the following order:

A. Is there any reasonable ground to suppose that the stay of the respondents' suits until after the disposition by this Court of the Bond and Share suits will substantially simplify and reduce, if not dispose of entirely, the issues of law and fact to be tried in respondents' suits?

B. Do the Bond and Share suits afford a reasonable basis for a comprehensive and prompt test of the Act?

C. Does the stay, as allowed, expose the respondents to any damage from which a permanent decree of the trial court could protect them?

D. Is the Government's action less fair or less conducive to the orderly testing of the constitutionality of the Act than the action of the respondents?

A. THE TRIAL COURT HAD REASONABLE GROUND TO BELIEVE THAT THE STAY OF RESPONDENTS' SUITS UNTIL AFTER THE DISPOSITION BY THIS COURT OF THE BOND AND SHARE SUITS WILL SUBSTANTIALLY REDUCE AND SIMPLIFY THE ISSUES OF LAW AND FACT TO BE TRIED IN RESPONDENTS' SUITS

The respondents in their suits seek to restrain the enforcement of the Act by the petitioners on the ground that the Act is unconstitutional in its entirety. The Government in its suits against the Bond and Share companies seeks to compel thirteen holding companies in the Bond and Share system to comply with the registration provisions (section 4 (a) and section 5) of the Act; and the Bond and Share companies set up as a defense that the Act is unconstitutional in its entirety, and they further, by cross-bill against the Government and against the individual petitioners, seek, as have the respondents, to restrain the enforcement of the Act and to have it adjudged unconstitutional in its entirety (AR. 80–175, NR. 82–178).

Respondents, in their petition to the Court of Appeals for allowance of the special appeal, admitted that all seven suits stayed by the trial court

were "a number of substantially identical suits" (AR. 195, NR. 199); that the bills in all these suits sought, "on substantially the same grounds, the same relief sought" by the respondents (AR. 191, NR. 195); and that "the same or similar relief has been sought in different United States District Courts by a large number of other corporations which are also holding companies within the definition of the Act" (AR. 191–192, NR. 195). The respondents urged that a comparison of their bills with the Government's bill in the Bond and Share suits would show that the issues sought to be raised in their bills against Government officers were broader than those sought to be raised in the Government's bill against the Bond and Share companies (AR. 193, NR. 197). But the respondents did not then show, and have not since sought to show, that the issues raised by the answer and the cross-bill of the Bond and Share companies against the Government and the petitioners as cross-defendants in the Bond and Share suits are less broad and less comprehensive than those raised in the respondents' own bills against the petitioners. Nor can it be urged, once it is conceded that all seven suits brought against the petitioners in the trial court "are substantially identical," that the cross-bill brought by the Bond and Share companies against the petitioners is not substantially identical with the respondents' bills. The prevailing opinions in the Court of Appeals apparently did not consider the substantial identity of the

issues presented by the Bond and Share cross-bill and those presented by the respondents' bills, but compared only the issues presented by the respondents' bills against the petitioners with the issues presented by the Government's bill against the Bond and Share companies. As Justice Van Orsdel stated: "We think, from an examination of the bills in the present cases and the bill in the Bond & Share case, which appears in the record, that many questions arise in the instant cases which would not and could not be disposed of in the Bond & Share case" (AR. 213, NR. 217); but Justice Van Orsdel made no reference to the cross-bill in the Bond and Share suits, which was also in the Record (AR. 96ff., NR. 99ff.).

The Attorney General on behalf of the petitioners had informed the trial court that the Bond and Share defendants were preparing an answer and cross-bill to contest the validity of the entire Act to the same extent and in the same manner as respondents were attempting in their suits (AR. 204, NR. 207–208). Before the Record was made up for appeal the Bond and Share cross-bill was filed and made a part thereof (AR. 80ff., NR. 82ff.). The Bond and Share cross-bill conclusively establishes that the representations of the Attorney General as to the issues which would be raised in the Bond and Share suits were true and well-founded, and that the suggestions of the respondents that their suits presented the question of constitutionality in a much broader and more

comprehensive way (AR. 193, NR. 197) and as applied to more typical situations, were not well founded. Of course, if the progress of the Bond and Share suits ever fails to meet the reasonable expectations of the trial court, it cannot be supposed that that court will not modify its interlocutory order as equity may require.

Respondents have not denied that if the Government loses in the suits brought against Electric Bond and Share Company and its principal subsidiaries there will be no necessity to try the present suits. But the respondents, fearing that the Act, which they have solemnly averred in their bills of complaint to be wholly unconstitutional and void, may after all be constitutional in its application to Bond and Share and its subsidiary holding companies, urge that a decision of this Court will not necessarily dispose of the respondents' suits.

The Government has not contended that the decision in the Bond and Share suits would, in a technical sense, be *res adjudicata* in the respondents' suits. But the Government submits that all the major issues raised by the respondents' suits will of necessity be disposed of by this Court's decision determining the constitutionality of the Act as to thirteen different holding companies in the Bond and Share system. Even if there should be any minor or incidental issues of law or fact in the respondents' suits not completely resolved by the decision of this Court in the Bond and Share

suits, which eventuality is highly problematical, there can be no question that the decision of this Court will precisely define and delimit the nature and scope of these issues so that they may be promptly and readily disposed of without the necessity of protracted and elaborate litigation. The Bond and Share suits were instituted by the Government for the very purpose of seeking test suits upon all the principal and typical kinds of situations presented by the Act. In so far as the respondents, with or without reason, urge that their situations are different and peculiar, they are merely pointing out to this Court that their situations are not typical situations and do not present appropriate suits for the initial testing of the Act.[16]

[16] The question whether the Act is valid in all particulars as against certain non-utility subsidiary companies of respondent American Water Works and Electric Company, for instance, is obviously a question that may more appropriately be determined after this Court has determined whether the Act can validly be applied to a subsidiary company solely on the basis of the interstate business in which the parent holding company is engaged directly or through one of its other subsidiary companies. That question is squarely presented in the Bond and Share suits. Indeed three allegedly typical non-utility subsidiary companies have been allowed to intervene in the Bond and Share suits (AR. 173, NR. 176). Furthermore, it is pertinent here in considering the equities in the American Water Works situation to point out that Rule 3D–5 promulgated by the Commission on November 25, 1935, following conferences with American Water Works and Electric Company officials, extends a broad exemption to certain non-utility subsidiaries. Rule 3D—5, Holding Company Act, Release No. 24, November 25, 1936.

As the Government has indicated, the respondents do not deny that if this Court finds the Act unconstitutional against all the Bond and Share companies their suits need not be tried. And the respondents cannot deny, nor do the prevailing opinions of the Court of Appeals deny, that whether the Bond and Share suits are decided in favor or against the Government, they will decide many issues in the respondents' suits. They will decide, as Justice Stephens pointed out in his dissenting opinion below (AR. 221, NR. 224–225), whether the registration provisions are a valid exercise of Federal power; whether the registration provisions are separable from the other provisions of the Act;[17] whether a utility holding company may be required to register because of acts done by its subsidiaries in interstate commerce; to what ex-

[17] On this point of the relation of separability to the Bond and Share suits and to their own suits, as on many other points in this proceeding, the respondents have tried to blow both hot and cold. For the purpose of offering an excuse to the courts below, as courts of equity, for bringing suits before complying with simple registration provisions, they have *pleaded* that the registration provisions *are not separable* from other provisions of the Act (AR. 13, NR. 18). For the purpose of trying to show a substantial difference between the scope of the issues which can be raised in their cases and in the Bond and Share cases, they have *argued* that the provisions of the Act *are separable*, that the Bond and Share suits will not put in issue section 11 and the other sections of which respondents complain, and that the Act may be constitutional as applied to the Bond and Share companies but unconstitutional as applied to respondents (AR. 26–27, NR. 26–27).

tent the validity or invalidity of any other provision of the Act may operate as a valid defense for failure to register;[18] and to what extent the valid-

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[18] Respondents may argue, as they did before the Court of Appeals, that the Government's reply to the answer and cross-bill in the Bond and Share suits (filed subsequent to the making of the Record in this proceeding) restricts the issues in those cases to the registration provisions. It is true that the Government takes the position in that reply, as it has consistently in this and every other Court, that the registration provisions of the Act are separable and that the Bond and Share defendants cannot raise the validity of every other provision of the Act which may at some time or under some conditions become applicable to them. Federal courts do not render advisory opinions. The Government further takes the position that if the Bond and Share companies are found to be legally and constitutionally obligated to register, equity will not accord them affirmative relief from provisions of the Act which are by their terms applicable only to registered companies, until they have at least absolved themselves from their unlawful conduct by complying with the registration provisions. It argues that a court of equity should not hesitate to apply this equitable doctrine to companies like the Bond and Share companies who joined with the respondents and other companies in making representations to the Congress, through the Committee of Public Utility Executives representing virtually the entire industry, that the industry was not opposed to appropriate federal regulation of utility holding companies in general or to the registration provisions of the proposed Act in particular. Whether that position of the Government shall prevail, will, of course, be determined by this Court in the Bond and Share cases. But it is hardly necessary to point out that, if respondents' suits go to trial, the same question would be raised by any answer which the Government could be expected to interpose in the present cases, and the same determination would be required of the courts below and of this Court as this Court will make in the Bond and Share suits. The Government so indicated in its briefs before both the

ity or invalidity of any other provision of the Act may be brought in issue—by independent bill or by cross-bill—by non-registered companies seeking to enjoin the enforcement of the registration and other provisions of the Act and to have the Act declared unconstitutional. Each of these issues is presented in the respondents' suits, as well as in the Bond and Share suits, and this Court's decision on each of these issues in the Bond and Share suits will both practically and legally dispose of them in the respondents' suits.

To add color for their contention that the issues in the Bond and Share suits are not substantially identical with the issues presented in their own suits, respondents pointed to various alleged factual differences between their own holding-company systems and the Bond and Share systems. The argument discreetly ignores the fact, which the Government very carefully stressed, that the Bond and Share suits involve thirteen differently circumstanced holding companies, doing business in a variety of ways and presenting various typical situations and problems under the Act, including all the typical situations in respondents' systems.

The alleged factual differences relied upon by the respondents boil down to assertions that, as distinguished from the Bond and Share companies,

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trial court and the Court of Appeals. If the Government's reply will restrict the issues in the Bond and Share cases, a Government answer would have the identical effect in respondents' cases.

(a) the respondents do not transmit a substantial amount of energy in interstate commerce; (b) the respondents have no intercompany service contracts the performance of which might be interstate commerce; and (c) the respondents do not actually control their subsidiaries, through service contracts or otherwise, except by exercising their voting rights as stockholders. As the Government pointed out to the trial court, each of these differences proves upon examination to be largely if not wholly illusory.

(*a*) *Interstate transmission of electric energy.*—The respondents are not themselves operating utility companies, but they have subsidiary companies which are engaged in the continuous transmission of electric energy across state lines in substantial amounts (AR. 38, NR. 40). Like the respondents, many of the holding-company defendants in the Bond and Share suits do not themselves transmit gas or electric energy in interstate commerce but do so through their subsidiary companies. To be specific, Bond and Share, American Gas and Electric, Electric Power and Light, American Power and Light, National Power and Light, United Gas Corporation, Power Securities Corporation, and Lehigh Power Securities Corporation—each of which is severally a defendant in the Bond and Share suits—allege, as the respondents allege, that they are not operating public-utility companies and do not themselves transmit gas or electric energy in interstate commerce, but do so

only through subsidiaries one or more steps removed (AR. 109–111, NR. 112–113). Like the contentions of respondents (answer to petition for writs of certiorari, p. 16n.), the pleadings of the Bond and Share defendants assert that their operating subsidiaries are engaged primarily in the intrastate business of generating and distributing electric energy or producing and distributing gas solely within the states in which they operate and only incidentally, if at all, in interstate commerce (AR. 111, NR. 113–114). The amounts of electric energy transmitted across state lines in both of the respondents' systems are very substantial, being in the case of North American about one-fifth of all the electric energy generated, and in the case of American Water Works nearly one-fourth (AR. 38–39, NR. 40); in the case of the Bond and Share companies the interstate transmission averages less than one-third of the electric energy generated by the system (AR. 49, NR. 51). Both the absolute and relative amounts of such interstate transmission done by the different subsidiaries of the respondents and the various Bond and Share defendants naturally vary greatly. House Interstate Commerce Committee Report,[19] Part 3, p. 50 ff., 720 (AR. 38–39, NR. 40).

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[19] Whenever reference is made to the House Interstate Commerce Committee Report, the reference is to the Report of the Committee on Interstate and Foreign Commerce of the House of Representatives, pursuant to H. Res. No. 59, 72d Cong., 1st Sess., and H. J. Res. No. 572, 72d Cong., 2d

(*b*) *Service Contracts.*—The respondent American Water Works and Electric Company in its bill affirmatively alleges it performs service contracts for its subsidiaries (AR. 4–5). Furthermore, North American Light and Power Company, an intermediate holding company which is itself a wholly owned subsidiary of the respondent North American Company, maintains extensive intragroup service contracts and arrangements within its own sub-holding company system according to the House Interstate Commerce Committee Report, Part 3, p. 743 (AR. 39, NR. 40). Only two of the Bond and Share defendants, Bond and Share itself (through its subsidiary Ebasco Services, Incorporated) and one intermediate company, the American Gas and Electric Company, perform, or are alleged by the Government to perform, service, sales, and construction contracts for their subsidiaries (AR. 50, NR. 52). None of the other Bond and Share defendants, including the other four principal intermediate holding companies (American Power and Light, National Power and Light, Electric Power and Light, and United Gas Corporation, each comparable in size to respondents' systems) is alleged to perform service contracts (AR. 110, NR. 112–113). Bond and Share itself performs service contracts for its subsid-

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Sess., House Report No. 827, Part 3. All references in this brief to such report were made in petitioners' briefs in both lower courts and appear in the Record in the affidavit of the Attorney General (AR. 36–40, NR. 37–41).

iaries only through a separately incorporated subsidiary (AR. 108–109, NR. 110–111). Like respondents' contentions (AR. 6, NR. 5), the Bond and Share pleadings assert that "none of said services * * * constitutes interstate commerce" (AR. 108, 110, NR. 111–113).

(*c*) *Control of Subsidiaries.*—Ignoring the existence of service contracts, respondents do not deny that they exercise such control by virtue of stock ownership over their subsidiaries as not to be entitled to any exemption from the Act under section 2 (a) (7), which provides exemptions for companies which do not control or exercise a controlling influence over operating utility companies (AR. 2–3, NR. 5–6). Similarly, the Bond and Share holding companies allege they are not entitled to exemption under section 2 (a) (7) (AR. 111–112, NR. 114). But just as the bill of complaint of each respondent alleges that each company in its system functions under the control of its own board of directors in accordance with the laws of the state in which it is incorporated (AR. 6, NR. 4–5), so the same technical defenses have been set up by the Bond and Share defendants (AR. 109–110, NR. 112). The respondents do not deny that by virtue of their stock ownership they control the election of the directors of their subsidiary companies (AR. 6, NR. 4–5). Similarly, Bond and Share defendants allege that they do not exercise any control over their subsidiaries except such as is inherent in stock ownership (AR. 82,

110, NR. 84–85, 113). The issue of control through ownership of voting securities[20] is, therefore, exactly the same in the suits against the Bond and Share companies, certainly as to those which have no service contracts, as in respondents' suits.[21]

As the Government pointed out to the trial court, the real fallacy in these alleged factual differences in the two sets of cases lies in the fact that the Government is proceeding not against Bond and Share Company alone but against a whole group of differently circumstanced holding companies, and is attempting to establish the duty of each such company to register as a holding company in its own right.

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[20] A holding company is distinguished from an investment company by the control it exercises over its subsidiaries. Control is an evasive factor often difficult to prove. The Act makes a specified percentage of voting stock ownership presumptive evidence of control and of the existence of the holding-company relationship. But machinery is provided so that a putative holding company may prove to the Commission that it does not exercise control or a controlling influence over another holding or utility company and that it is not therefore a holding company within the meaning of the Act (Section 2 (a) (7)).

[21] If statutory responsibility can be evaded by the multiplication of corporate subsidiaries, any and all holding-company regulation becomes self-defeating. If a holding company can escape the provisions of the Act relating to intra-system service contracts by handling its service contracts through a subsidiary one or two degrees removed from it, then attempts at holding-company regulation can result only in more, rather than less, corporate obfuscation. These issues are clearly raised in the Bond and Share suits just as they are raised in the respondents' suits.

Certainly if a stay can ever be justified on the ground that the final outcome of litigation instituted in another court of parallel jurisdiction under the same sovereignty will reduce substantially or eliminate altogether the issues in the stayed suits, it cannot be urged that the Record in this proceeding reveals any manifest abuse of the trial court's discretion in granting the stay.

B. THE TRIAL COURT HAD REASONABLE GROUND TO BELIEVE THAT THE BOND AND SHARE SUITS AFFORD A REASONABLE BASIS FOR A COMPREHENSIVE AND PROMPT TEST OF THE ACT

1. THE TRIAL COURT COULD REASONABLY FIND THAT THE BOND AND SHARE SUITS AFFORD THE BASIS FOR A COMPREHENSIVE TEST OF THE ACT

Certainly no more comprehensive test suits could have been arranged by the Government with any holding company or groups of holding companies than the Bond and Share suits. The Government did not select for suit simply one specially circumstanced company, but selected a super-system which within itself presented more typical situations affected by the Act than could be found in any other large multiple holding-company group. Certainly no reason has been adduced to show that the trial court was arbitrary or unreasonable in regarding the Bond and Share suits as comprehensive and appropriate test suits.

The prevailing opinions of the Court of Appeals did not deny that as test suits the Bond and

Share suits were fair or comprehensive, but proceeded on the theory that each company had a right to have its own case tried, subject only to such continuances as may be necessary to meet the convenience of the parties and that the trial court was without power to grant a stay which might relieve the court of the burden of unnecessarily long and protracted trials in numerous suits.

The respondents were unable to prove to the trial court that their own suits afforded a basis for a fairer or more comprehensive test of the Act than the Bond and Share suits. And not one of the opinions in the Court of Appeals so found.

The trial court expressly found that the Government's plan of procedure was fair and that it adequately safeguarded respondents' interests. There is nothing in the Record to justify a contrary finding, certainly nothing to warrant a disturbance of the District Court's finding.

2. THE TRIAL COURT COULD REASONABLY FIND THAT THE BOND AND SHARE SUITS AFFORD A PROMPT TEST OF THE ACT

In order that as many issues as possible might be determined in a single litigation, the Securities and Exchange Commission filed its suits against the principal Bond and Share companies to compel compliance with the Act on November 26, 1935, five days before December 1st, the deadline for registration under the Act. Certainly no prompter action could be asked of the Government.

The Government's motion for a stay (AR. 24, NR. 25), recited that the Government was eager to secure an early determination of the constitutionality of the Act, and to that end had already instituted proceedings against the principal Bond and Share holding companies. It recited the determination of the Government to prosecute those proceedings with all diligence to secure from this Court promptly an authoritative determination of the validity of the Act. It set forth that no public interest would be served by pressing for a decision of this issue in a multitude of suits, but to the contrary that such a course would make against an orderly and economical disposition of that controversy.

The Government was in a position to press the Bond and Share suits much more expeditiously than it could press a suit against any comparable holding-company system. Several years ago the Government had a suit against Bond and Share involving somewhat similar issues of fact. *Federal Trade Commission* v. *Smith,* 1 F. Supp. 247 (S. D. N. Y. 1932). After extensive study and negotiation, a stipulation of facts was agreed upon in that case. The chief counsel for the Government in that litigation is now a member of the Securities and Exchange Commission, and was in a position to make available to the Commission the results of his months of labor on the earlier suit.

The Commission undertook to develop intensively the further facts necessary for the prosecution of the Bond and Share suits. The Government had already done considerable work on the Bond and Share suits before the argument in the trial court. It has now been engaged for nine months in developing the facts. It has for months worked with counsel for the Bond and Share companies in the preparation of a detailed stipulation. The stipulation as signed runs without exhibits into three volumes and 639 pages, and with exhibits into seven volumes and 2,165 pages. The stipulation has been submitted to the district court, and the necessity of a long trial avoided. Elaborate and exhaustive principal briefs and reply briefs have been filed, and a decision of the district court may reasonably be anticipated by the turn of the year. The Government has undertaken and has prosecuted the Bond and Share suits with all possible diligence.

The record in the Bond and Share suits is full and complete. The parties have agreed to the incorporation in the record of all evidence that either party considered relevant so that there would be no necessity of this Court's ultimately remanding the suits for the taking of further evidence because of any dispute as to the scope of the issues. No comparable record could have been prepared in the respondents' suits in a shorter period of time.

3. THE TRIAL COURT COULD REASONABLY FIND THAT THE BOND AND SHARE SUITS AFFORD A MORE CERTAIN TEST OF THE ACT THAN DO RESPONDENTS' SUITS

The Bond and Share suits will more certainly provide a speedy adjudication by this Court than will suits brought by any non-registered company against Government officials on alleged equitable grounds to restrain enforcement of the Act and to have it declared a nullity. The suits instituted by the Government are expressly authorized by section 18 of the Act and are immune from attack on jurisdictional grounds.

The Bond and Share suits afford the defendant companies the opportunity—which they have utilized—to plead as a defense any provision of the Act that may possibly be relied upon by the respondents as a justification for their failure to register and their prayers for equitable relief. In setting up such defenses the defendants in the Bond and Share suits will not be embarrassed to the same degree as the respondents by the disclaimers of threats by the Attorney General, the Postmaster General, and the Commission (AR. 40–45, NR. 42–46), or by their own failure to register. For the Government is taking the initiative in proceeding against the Bond and Share companies, and they may plead that they are not legally obliged to register even if they could not affirmatively invoke the jurisdiction of equity to protect them from filing a simple notification of registration.

The Bond and Share suits further afford the defendant companies the opportunity—which they have utilized—to plead affirmatively by way of cross-bill any provision of the Act that may possibly be relied upon by respondents as a justification for their failure to register and their prayers for affirmative relief. The briefs filed by the Bond and Share companies assail not only the constitutionality of the Act as a whole but of each and every provision of the Act as respects not simply Electric Bond and Share Company itself, but the twenty-one other defendants in the Bond and Share suits. To the Government's knowledge there is no argument which has been advanced against the Act by the respondents which is not advanced against the Act by one or more of the Bond and Share companies in their suits. To the Government's knowledge there is no issue raised by the respondents which the Bond and Share companies do not contend they have a right to raise in their suits.

It is true that the cross-bill of the Bond and Share companies may run against the same jurisdictional obstacles as stand in the way of the respondents' suits. As a matter of fact the Government has filed with the District Court for the Southern District of New York a separate brief on the scope of the issues, a major part of which is devoted to showing that the cross-bill of the Bond and Share companies is jurisdictionally defective; but every objection raised by the Government to

the Bond and Share cross-bill would apply with the same or greater force to the respondents' independent bills. If, however, the Bond and Share cross-bill fails for jurisdictional reasons, the Government's bill of complaint would still stand free of jurisdictional difficulties; while if the respondents' independent bills should fail for the same jurisdictional reasons, no decision on the validity of the Act or any part thereof could be obtained in respondents' cases. There can be no question that when the Bond and Share suits reach this Court, not only will the important and disputed jurisdictional questions be decided with finality, but there will also be decided—by reason of the Government's bill of complaint and the defendants' defense—the substantive issues of the constitutionality and separability of the registration provisions. There is not the danger, as there is in the respondents' cases, that after protracted trials the suits may be dismissed upon grounds of equitable jurisdiction without any consideration of the substantive constitutional issues.

C. THE STAY, AS GRANTED BY THE TRIAL COURT, DOES NOT EXPOSE THE RESPONDENTS TO ANY DAMAGE FROM WHICH A PERMANENT DECREE OF THAT COURT COULD PROTECT THEM

The prevailing opinions in the Court of Appeals proceeded on the assumption that it was necessary to the protection of the rights of the respondents to have their suits tried before a comprehensive test

suit had been disposed of on appeal by this Court. But if the respondents were entitled to have their cases tried without awaiting the outcome of an appeal in a test case, every company affected by the Act would have a similar right. Even the respondents, as we shall point out, did not venture to argue before the trial court or the Court of Appeals that it was necessary or even desirable that all the suits which had been instituted or which might be instituted against the petitioners should be tried (see pp. 77–79, *infra*). Even the respondents hesitated to rest their case completely and unqualifiedly on the naked and technical ground that the court was without any power to relieve the calendar from the trial of a multitude of essentially similar suits.

Justice Stephens pointed out in his dissenting opinion in the Court of Appeals (AR. 222–223), NR. 226):

> The right of the plaintiffs to be heard with reasonable promptness was not the only right involved in the administrative problem confronting the trial court. There was also the right of third parties—the plaintiffs and defendants in the various cases, civil and criminal, in the usual course of the judicial business of the Supreme Court of the District of Columbia—to seasonable trials; and there was, in addition, the right of the public through its agents, the defendants, to an adequately presented defense of the cases brought by the plaintiffs locally and of the many other similar cases not un-

> likely to be tried locally, and to an adequate and comprehensive test of the constitutionality, in the New York suit, of a statute of great public significance. Whatever solution of the administrative problem the trial court reached would affect all of these rights. It was inevitable from the very nature of the problem that at least one of them would be to some extent impaired. The exercise of the plaintiffs' right to a reasonably prompt day in court had, obviously, to a large extent been made unnecessary by the agreement of the defendants not to enforce the statute—this agreement to be made good by injunction if necessary; that is to say, the plaintiffs had in large part gained by this agreement what they would have gained by immediate and successful prosecution of their causes.

If the trial court had any discretion, it cannot be said that the considerations to which Justice Stephens refers were irrelevant. The prevailing opinions took for granted the fact that the business of the respondents would be materially affected by the Act until the constitutionality of the Act was finally determined. But the prevailing opinions of the Court of Appeals overlooked the fact that the constitutionality of the Act as to the future could be finally determined no more by a permanent than by a temporary decree of the trial court. Such a final determination could be obtained only from this Court.

So far as a decree of a court of equity is valuable to the respondents for its own sake rather than as a vehicle of appeal to this Court, a temporary injunction or interlocutory decree will have the same effect during its pendency as a final decree. The respondents have not sued, nor can they sue, the United States. They have brought their suits not against the Act but against the petitioners. A temporary decree, which cannot be vacated unless and until the trial court becomes affirmatively satisfied that the decree is no longer warranted in fact or in law, will certainly give respondents the same protection against the petitioners as would a final decree.

Even if it were true, however, that the interlocutory decree of the trial court did not offer as complete or as effective protection to the respondents as a permanent decree of that court might offer, it could not be said that the trial court abused its discretion in granting the stay. Discretion is not a matter of rule but of judgment. Discretion involves the weighing of competing rights and conflicting interests. When many different and equally important interests are involved, trial procedure is not a matter of logic or abstract justice but of practical fairness. *Summum jus summa injuria.* In reviewing the action of the trial court, the question is whether the protection afforded was fair, whether the protection was as substantial as could be expected in view of

other demands upon the courts and upon the Government and in view of the rights of other suitors. But certainly it cannot be said that the trial court abused its discretion if there was any reasonable basis for the trial court's practical judgment that "final relief [of the trial court] would afford them [the respondents] little advantage over the temporary relief now offered them" (AR. 32-33), NR. 34), that "I [the trial court] cannot see how their [the respondents'] real interests will not be protected by the temporary injunction to which the defendants [the petitioners] offer to submit" (AR. 33, NR. 34), and that "the plan proposed by the defendants would give all the plaintiffs all the protection needed pending a decision by the Supreme Court and save great amount of labor, time and expense" (AR. 33, NR. 35).

1. RESPONDENTS HAVE NO RIGHT TO A PERMANENT DECREE MERELY AS A VEHICLE OF APPEAL TO A HIGHER COURT, AND THEY COULD NOT APPEAL A PERMANENT DECREE IN THEIR FAVOR

Respondents have no right to a declaration from the trial court or from this Court regarding the validity of an Act of Congress as such. Respondents' sole right, if any, in the instant cases is to protection by a court of equity from the alleged illegal conduct of Government officers. And when they receive that protection they have received all that a court of equity has power to give them. The Federal courts do not review Acts of Congress as such, but dispose of concrete

cases and controversies coming before them for adjudication. As this Court stated in *Adkins* v. *Children's Hospital,* 261 U. S. 525, 544: "From the authority to ascertain and determine the law in a given case, there necessarily results, in case of conflict, the duty to declare and enforce the rule of the supreme law and reject that of an inferior act of legislation which, transcending the Constitution, is of no effect and binding on no one. *This is not the exercise of a substantive power to review and nullify acts of Congress, for no such substantive power exists.* It is simply a necessary concomitant of the power to hear and dispose of a case or controversy properly before the court, to the determination of which must be brought the test and measure of the law."

To the same effect is this Court's statement in *Massachusetts* v. *Mellon,* 262 U. S. 447, 488: "*We have no power per se to review and annul acts of Congress on the ground that they are unconstitutional.* That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. *It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right.*" See also *Ashwander* v. *Tennessee Valley Authority et al.,* 297 U. S. 288.

In any *bona fide* case or controversy, therefore, a party may ask a court in adjudicating that case or controversy to disregard a legislative act to the extent to which it conflicts with his alleged constitutional rights. But if the court finds that the statute conflicts with his constitutional rights, he cannot prosecute an appeal in order to obtain a more authoritative declaration of his rights to guide his future conduct. No one under our system of jurisprudence has a right to appeal from a decree in his favor for the purpose of having his rights declared by a higher court. *New York Telephone Co.* v. *Maltbie,* 291 U. S. 645.

2. A PERMANENT DECREE OF THE TRIAL COURT, JUST AS AN INTERLOCUTORY DECREE, WOULD HAVE TO YIELD TO THE LAW AS SUBSEQUENTLY DECLARED BY THIS COURT IN OTHER CASES

So far as it operates prospectively, a permanent decree of the District Court, no less than an interlocutory decree, would have to yield to the law as subsequently declared by this Court in other cases. If the respondents obtained a final decree in their favor from the trial court, they could not appeal from that decree. Yet that final decree would not protect the respondents in the event that subsequent decisions of this Court in other cases should establish that the decree had been based upon a rule of law different from that announced by this Court.

As the trial court pointed out (AR. 32–33, NR. 34):

> If this Court [the trial court] should hold the Act unconstitutional, the final re-

> lief would afford them [respondents] little advantage over the temporary relief now offered them. It would seem that injunctions against the present defendants might not bind their successors in office and if the Supreme Court should afterwards hold the Act Constitutional, their success in the instant suits would avail them little. *Ex Parte La Prade,* 289 U. S. 444.
>
> Even a consent decree may be modified in invitum where the situation of the parties and conditions have so changed as to render the enforcement of the decree inequitable. *United States* v. *Swift & Company,* 286 U. S. 106. And in any event a bill of review for error of law apparent on the record would lie. *Rudolph* v. *Hunt,* 52 App. D. C. 343. The plaintiffs seek an early decision by the Supreme Court but they could not appeal from a decree of this Court in their favor, and as said before, I cannot see how their real interests will not be protected by the temporary injunction to which the defendants offer to submit.

It is clear that a permanent injunction or declaratory judgment, in so far as it operates prospectively, will be dissolved if subsequently in a different action this Court rules that the law upon which such injunction was based is not as the enjoining court held it to be.

"The great case of *Pennsylvania* v. *Wheeling & Belmont Bridge Company,*" 18 How. 421 (as it is fittingly described by Mr. Justice Gray in *Mills* v. *Green,* 159 U. S. 651, 655) is the leading authority

for this equitable doctrine. In that case, one of original jurisdiction in this Court, an injunction had been issued, at the request of the Commonwealth of Pennsylvania, to prevent the construction by the defendant of a bridge across the Ohio River which this Court found to constitute an unlawful interference with free navigation. Subsequently Congress by law authorized the construction of this particular bridge, and the defendant constructed the bridge. A bill was then brought by the Commonwealth of Pennsylvania to enforce the original injunction and to punish the defendant for contempt; the defendant moved to dissolve the injunction. This Court held that in equity the injunction should be dissolved and the defendant should not be punished for building the bridge in violation of the Court's original order, saying (18 How. at 431–432):

> * * * But that part of the decree, directing the abatement of the obstruction, is executory, a continuing decree, which requires not only the removal of the bridge, but enjoins the defendants against any reconstruction or continuance. Now, whether it is a future existing or continuing obstruction depends upon the question whether or not it interferes with the right of navigation. If, in the mean time, since the decree, this right has been modified by the competent authority, so that the bridge is no longer an unlawful obstruction, it is quite plain the decree of the court cannot be enforced.

The *Wheeling Bridge* case was followed by the Oregon Circuit Court in *Hatch* v. *Wallamet Iron Bridge Co.*, 27 Fed. 673 (C. C. Ore. 1886), a case which would be identical with respondents' cases had injunctions been issued by the trial court, and were this Court on appeal in the Bond and Share cases to uphold the Holding Company Act. In the *Hatch* case, the circuit court had earlier enjoined petitioner from constructing a certain bridge, which the court found an obstruction to free navigation in violation of the Act of Congress admitting Oregon to the Union. Subsequently, in an entirely different suit, arising not under the Act admitting Oregon but under a similar statute admitting California to the Union, this Court had decided that the statute did not prevent construction of a similar bridge. The defendant in the Oregon suit then asked the circuit court to dissolve the injunction. The court refused this request solely on the procedural point that the question could not be raised in the particular manner, but indicated that the petitioner would have a defense to any suit which might be brought against him for violating the injunction. The court explicitly referred petitioner to the authority of the *Wheeling Bridge* case, stating (27 Fed. at 674):

> Upon the authority of these two cases it is my opinion that if the law applicable to this matter has been changed, or ascertained to be different from what the court apprehended it to be, the question will properly

> come up on an application to enforce this decree, and, as I have said, the further question will come up as to whether this bridge was the same that was enjoined. I am unable to do more than to dismiss this petition with these suggestions, leaving the parties to bring the matter before the court in the way I have indicated.

It is unimportant, for the purpose of the instant proceedings, whether the proper procedure for the setting aside of a continuing decree as regards future action, because the conditions upon which it was based are altered by subsequent decisions of this Court, be by a petition to vacate or modify, by a bill of review, or otherwise. Possibly in some cases more than one procedure is available. As pointed out, this Court granted a motion to vacate in *Pennsylvania* v. *Wheeling & Belmont Bridge Company,* 18 How. 421, and in the *Hatch* case, while the circuit court had earlier held that a bill of review was not the proper procedure (*Wallamet Iron Bridge Co.* v. *Hatch,* 19 Fed. 347 (C. C. Ore., 1884)), this Court, on an appeal from that earlier ruling which was pending when the subsequent application in the circuit court to vacate was made, held that a bill of review was proper and reversed the circuit court (*Willamette Iron Bridge Co.* v. *Hatch,* 125 U. S. 1).[22]

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[22] The authorities cited by respondents in the Court of Appeals are entirely inapplicable, because they relate not to continuing decrees but to decrees or judgments which have been executed. Of course, if a court decides that one party

The power to dissolve or modify a continuing decree—whether it be permanent or interlocutory—in so far as it relates to future acts, after the conditions on which it was based are altered by the decisions of this Court declaring the law applicable to such situations, is "inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need." *United States* v. *Swift & Co.*, 286 U. S. 106, 114.

3. RESPONDENTS HAVE THEMSELVES SUGGESTED THAT TEMPORARY INJUNCTIONS WOULD PROTECT THE HOLDING-COMPANY INTERESTS PENDING THE DISPOSITION OF TEST SUITS

If the majority of the Court of Appeals were correct in holding that respondents could not be sufficiently protected by a temporary injunction pending the disposition of the Bond and Share suits to justify the granting of the stay, it would follow that other suitors could not be sufficiently protected by a temporary injunction pending the disposition of the respondents' suits. Yet re-

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and not another has legal title to land, that judgment is *res adjudicata* in any subsequent litigation between the parties. *Southern Pacific Railroad Company* v. *United States*, 168 U. S. 1. Or if contraband liquor is taken from a carrier by legal proceedings, the carrier is protected by that decree from a later suit for failing to deliver the liquor. *American Express Co.* v. *Mullins*, 212 U. S. 311. The Government has never suggested that either a permanent or an interlocutory decree, *during the period of its effectiveness*, would not protect the respondents.

spondents did not urge that it was necessary or even desirable that all the suits against the petitioners should be tried. To the contrary, counsel for the respondents stated to the trial court: "I undertake to say that it will not be difficult for us [presumably himself and Government counsel] to agree upon a group of three or four cases which will present every question that is involved in this multitude of suits, so that every one of these companies may be satisfied that its rights will be promptly determined" (AR. 193, NR. 197). But once it is recognized, as respondents themselves have recognized, that the rights of other suitors may be adequately protected by temporary injunctions pending the final disposition of appropriate test suits, the Government submits that the rights of such suitors including the respondents may similarly be adequately protected pending the final disposition of the Bond and Share suits.

The respondents are unable to deny that the burden placed upon the courts by the trial of fifty suits all contesting the validity of the Holding Company Act is unwarranted and should be avoided. *They do not deny that, if respondents' suits were tried, the other holding companies would be fully protected in the meantime by a stay and temporary injunction.* Obviously, therefore, the demand by respondents for a trial of their own suits is made for reasons other than their fear that they would not be fully protected by an interlocutory decree. Every sizeable holding company

might, if it cared to, make a similar demand that *its* suit be tried. Every large holding-company system is necessarily a corporate enterprise of considerable magnitude and complexity, differing in some detail from all others. But no one company has a right to insist that the Government join with it in making its suit a test case and to clog the calendars of the courts with numerous test suits when one should suffice. The only claim of the respondents cognizable in a court of equity is to have their constitutional rights protected from invasion by the unlawful and tortious acts of others. If a stay and interlocutory decree will protect their alleged constitutional rights from such invasion, respondents have no right, constitutional or otherwise, to insist that their cases be carried to this Court.

4. AN INTERLOCUTORY DECREE OF THE DISTRICT COURT AFFORDS THE RESPONDENTS AS COMPLETE PROTECTION AS A PERMANENT DECREE OF THAT COURT

The stay-order was granted subject to all the terms and conditions set forth in the opinion of the trial court. That opinion offered the respondents an interlocutory decree, if they wished it, although the trial court did not think a formal decree necessary in view of the petitioners' assurances that they would not seek to enforce the Act against the respondents during the pendency of the stay (AR. 33, NR. 35). The Government had consented, and has at the present time no objection, to the issuance in respondents' favor of an inter-

locutory decree in the same form and of the same scope as a final decree. The respondents either have not chosen or have not deemed it necessary to take advantage of these offers.

Although the bills of complaint of the respondents allege, in vague and general terms, threats of enforcement on the part of the petitioners (AR. 16, 17, NR. 2, 21–22), petitioners had in fact made no threats and had publicly and officially disclaimed any intention to enforce the Act pending a final decision as to its validity by this Court (see pp. 11–12, *supra*). Since, however, the legal effect and factual consequences of these disclaimers were disputed by the respondents, it might be urged that on the motion to stay the threats alleged in the bills could not be wholly ignored. It was for that very reason that the Government did not urge that the respondents be obliged to rely upon the petitioners' formal and public disclaimers, but offered further to submit to an interlocutory decree. The Government submits that such an interlocutory decree can certainly protect the respondents, as effectively and fully as any permanent decree, from any alleged damage, irreparable or otherwise, which they may be suffering by reason of any alleged action or threat of action on the part of the petitioners.

In their answer to the petition for writs of certiorari in the present cases (p. 14), respondents contend that "until the Act is *finally* declared to be unconstitutional as against these respondents

[assuming it to be unconstitutional, as their bills allege], the cloud which its existence on the statute books will cast on the validity of practically every important act done by them in their essential corporate activities will practically paralyze the normal conduct of their business." But apart from any action or threat of action on the part of the petitioners which would be effectively stayed by an interlocutory decree, any cloud of illegality upon respondents' businesses springs not from any acts or threats or color of authority of the petitioners but from the Act itself. But respondents have brought their suits against the petitioners, not against the Act. If a cloud of illegality exists, it springs from section 26, which merely enacts the common law rule, making void as regards third persons contracts made in violation of law. And neither a permanent nor a temporary decree of the District Court against the petitioners can protect respondents against the rights of third persons not parties to the proceeding. The petitioners have no power either to enforce or to abrogate section 26; and the suits brought by the respondents against petitioners cannot remove a cloud which petitioners have neither created nor have the power to remove.

It is clear, therefore, that in so far as any permanent decree of the District Court in a proceeding against the petitioners could protect respondents, respondents can obtain that same protection from an interlocutory decree having like force and effect

during its pendency.[23] So far as future effectiveness is concerned, a permanent decree of the District Court no less than an interlocutory decree would have to yield to the law as subsequently declared by this Court in other cases (see pp. 72–77, *supra*).

Respondents realize that they must run the risk that a permanent as well as an interlocutory decree of the District Court will be opened up to comply with the law as declared by this Court. Respondents are interested in a permanent decree against the petitioners not for its own sake but as a vehicle of appeal to this Court. But respondents as a matter of right are entitled to no more than the protection by a decree of the District Court.

If the respondents have the right to have their cases taken to this Court, every other holding company may claim a similar right. Indeed, at the time the stay was applied for and granted, it seemed evident that many holding companies

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[23] As was pointed out to the trial court and the Court of Appeals, if respondents' suits proceeded to trial and if respondents failed to establish any action or threat of action on the part of the petitioners against the respondents, the very serious question would arise whether there was any case or controversy between the respondents and the petitioners on which the jurisdiction of the court to render a permanent decree could be predicated. *Ex parte La Prade*, 289 U. S. 444; *Liberty Warehouse Co.* v. *Grannis*, 273 U. S. 70; *Ashwander* v. *Tennessee Valley Authority et al.*, 297 U. S. 288. This very question will be presented to this Court when this Court comes to consider the cross-bill in the Bond and Share suits.

would claim that right unless the Government handled the test litigation in a manner dictated by the holding companies. The trial court found that the plan of the Government was fair and conducive to the orderly administration of justice and afforded respondents complete protection of their rights.

5. THE STAY AS ALLOWED NOT ONLY GIVES TO THE RESPONDENTS IMMEDIATELY THE RELIEF THAT THEY HAVE PRAYED FROM THE TRIAL COURT, BUT CANNOT POSSIBLY PREJUDICE OR MAKE MORE DIFFICULT THE ESTABLISHMENT OF THEIR ALLEGED RIGHTS TO PERMANENT RELIEF IN THE EVENT THAT THE BOND AND SHARE SUITS DO NOT WHOLLY ELIMINATE THE NECESSITY OF A TRIAL

How can the respondents possibly be prejudiced by the granting of the stay? The usual ground for opposition to a stay is the practical ground that the party opposing the stay during its pendency is deprived of the relief which he is seeking. Here, as has been shown, the respondents are given the right by the terms of the stay-order to all the relief which they have sought against the petitioners; and, so long as the stay is effective, petitioners can neither take any action nor make any threat against the respondents under the Act. Respondents' alleged right to relief has not been either suspended or deferred; it has been *granted*.

The respondents seek to draw an analogy between the action of the trial court in their cases and that of the New York court in *Sliosberg* v. *New York Life Insurance Co.*, 244 N. Y. 482

(1927). But the *Sliosberg* case involved a *statutory* stay, until after the recognition of the Russian Government, of a legal cause of action to recover on an insurance policy payable in Russian rubles. Not only was the right of the plaintiff to recover indefinitely suspended, but the plaintiff was not given, during the pendency of the stay, possession of, or the right to use, the money which he was claiming. To the contrary, during the stay he was deprived of the decree or judgment which he would have obtained under a permanent decree, and the defendant was free to use and enjoy the money it owed to the plaintiff. Moreover, the plaintiff's cause of action in the *Sliosberg* case depended upon the proof of certain past events, and it might well have become much more difficult for him years later to prove his right to recover. Respondents herein, on the other hand, are not concerned with past events, but solely with the future operation of the Act.

Indeed, a recognized ground frequently and properly urged against a stay is that the delay will prejudice the litigant's ability to prove his case. His witnesses may die, their memories fade, the records on which he relies may be lost or destroyed. But no such considerations are applicable here. If a limited trial of the suits brought in the trial court should ever become necessary, the burden upon the respondents will be no more difficult a year from now than it is today, their means of defense would be neither lost nor impaired. In

fact, after the trial of the Bond and Share suits, if there be need for any trial of respondents' cases, the burden upon respondents of establishing their causes may be much less onerous than at the present time. In these circumstances and in view of the fact that a temporary decree gives to respondents all the protection which a court of equity can give them, there can be no doubt that the stay did not and could not injure respondents and that the District Court's issuance of the stay cannot be regarded as arbitrary or unreasonable.

D. THE ACTION OF THE GOVERNMENT IS NOT LESS FAIR OR LESS CONDUCIVE TO THE ORDERLY TESTING OF THE ACT THAN THE ACTION OF THE RESPONDENTS

There is nothing in the prevailing opinions of the Court of Appeals to suggest that the action of the Government is less fair or less conducive to the orderly testing of the Act than the action of the respondents. The trial court found the contrary (AR. 33, NR. 34–35). And Justice Stephens in his dissenting opinion stated (AR. 223, NR. 226–227):

> But a decision to the contrary, denying the stay, would have impaired the other rights involved: For the court to deny the stay was for the court to bring on for trial the plaintiffs' cases, complex and burdensome, not unlikely the five similar cases already filed locally, not unlikely forty-nine others filed elsewhere but without jurisdiction of the defendants, and not inconceivably many

> more. Under the plaintiffs' theory each utility must in its own protection present its own case on its own facts. This would be to clot the flow of justice and to defer the day in court of the third party plaintiffs and defendants seeking to litigate their causes, civil and criminal; and this would be to engage the Commission and its counsel on so many legal battle fronts at once as likely to make inadequate their preparation and presentation of a defense in the local suits, and their preparation and presentation of a plaintiff's case in the comprehensive test suit in New York. Moreover, in no effective manner could such impairment of the rights of third parties and of the public be minimized by the plaintiffs or by the court as was impairment of the plaintiffs' right minimized by the defendants—so far as enforcement of the statute is concerned—through the agreement of non-enforcement, and, virtually by the court, through injunction.

The prevailing opinions in the Court of Appeals did not suggest that the respondents' suits offered a fairer test of the Act, but were based on the theory that each holding company had a right to a prompt trial of its own case without regard to the fact that fair and comprehensive test suits were already under way and that the protection of an interlocutory decree was available to each such holding company during the pendency of the test suits.

The respondents sought to intimate that the Bond and Share suits were not fair and reasonable test suits and charged the Government with "hand-picking" the Bond and Share suits as "its own particular case, in a court of its own choosing, and involving only one or two narrow issues of its own devising" (AR. 29, NR. 30). The Bond and Share system is one of the best known and one of the oldest of the great public-utility holding company systems in the country. The Government did not single out the top holding company or any specially circumstanced holding company in that system, but sued all of the principal holding companies in that large system. The Government brought its suit in the only district where service could be obtained on all of the defendants and in the only district where the Government would have effective power to subpoena the necessary witnesses and the necessary records.

In contrast to the Government's care in bringing an entire holding company system before the United States District Court for the Southern District of New York, it is significant that neither The North American Company nor American Water Works and Electric Company has chosen to join all of the principal holding companies in its system in its suit, and that other holding companies in each of these systems have actually brought suits outside of the District of Columbia (AR. 39, NR. 40).

Neither of these systems has submitted itself as a whole to the jurisdiction of the trial court. Their records and their witnesses are within their control but are not within the effective reach of the trial court. A subsidiary of American Water Works and Electric Company, West Penn Electric Company—a large intermediate holding company which controls all the electric-utility properties in the American Water Works and Electric Company system—has brought suit in Baltimore (AR. 39, NR. 40). North American Edison Company and North American Light and Power Company, two large intermediate holding-company systems within the so-called "North American system," and one of which at least was represented by the same counsel as represent The North American Company in this Court, have brought suit in Wilmington (AR. 39, NR. 40).[24] While respondents have already offered to transfer to the District of Columbia the suits which their subsidiaries have brought in other districts,[25] the plaintiffs in those

[24] Likewise, the other plaintiffs in the trial court are but parts of holding-company systems which, through other companies, have instituted proceedings outside of the District of Columbia. The Tennessee Electric Power Company is a subsidiary of the Commonwealth and Southern Corporation, which has instituted proceedings in Wilmington. The other plaintiffs before the trial court are members of the United Light and Power system, a subsidiary of which has instituted proceedings in Columbus, Ohio (AR. 39, NR. 41).

[25] This offer to transfer suits is at least some indication that it is not unlikely that other companies who have brought suits outside the District of Columbia will, when their suits are dismissed for defective service, recommence them within the District if the stay is finally vacated.

suits do not comprise all the important units in respondents' systems. New Empire Corporation and Central States Electric Company, which are part of the North American system, have not as yet offered to intervene. House Interstate Commerce Committee Report, Part 3, p. 719 (AR. 39, NR. 40). To bring in all these companies would present a series of suits equally complicated but no more typical than the Bond and Share suits.

Apart from the fact that the Record is barren of proof that the respondents' suits are more appropriate for test suits than the Bond and Share suits, and apart from the fact that respondents have failed to show that they are affected by the Act in any respect materially different from several intermediate Bond and Share holding companies which perform no service contracts for their subsidiaries, and which, like the respondents, are not operating companies but transmit electric energy and gas across state lines only through subsidiary companies, the respondents contend that the petitioners have been unfair in refusing to engage in battle with them. The respondents urge that a few more suits will not overtax the Government's facilities. But the question involved is more than the physical overtaxing of the Government's facilities, which was very real when the Government was confronted with a concerted multiplicity of suits all over the country, and with the possibility of the transfer of all of these suits to the District of Columbia. The question was not merely one of

the Government's engaging a few more lawyers to fight these suits as an insurance company might fight suits for personal injuries. There was the more important and far-reaching question whether it was a justifiable burden upon our judicial machinery to have the courts' calendars unnecessarily clogged with a multitude of suits brought for a common object and whether contemporaneous trials of numerous such suits were conducive to the fair and consistent presentation to the courts of the constitutionality of an important Congressional enactment.

The preparation and trial of each of these suits was comparable in magnitude to an important anti-trust case. It would have been an unnecessary burden upon the trial court and a wasteful and unjustified abuse of the court's process for the very same issues of jurisdiction and substantive law to be fought out in several different suits, each of which would of necessity require the most elaborate factual record, when one comprehensive test case carried to this Court could eliminate all or virtually all of those issues.

The affairs of each of the respondent holding-company systems are intricate and complex, their functioning cannot be understood without careful study. The facts regarding these systems are peculiarly within the knowledge of their management and their counsel and cannot be readily and quickly disentangled and established by legal proof by adverse counsel.

Respondent North American Company has asserted that it would cost it and its subsidiary companies substantially in excess of $50,000 merely to prepare registration statements containing the information which the Commission might reasonably require to be filed under section 5 (NR. 16). Since the respondent systems are, by respondents' own admissions, of such size and intricacy that the preparation of simple statements of facts and figures readily available to the respondents would involve very substantial labor and expense, how much greater will be the labor and expense upon the courts and the Government in preparing and trying either of the respondents' suits? A proper presentation of facts in such circumstances would require months of investigation.[26] It would proba-

[26]A cursory examination of respondents' long and exceedingly complicated complaints and of the careful way in which their allegations have been framed will further indicate how much of a burden the trial of a single one of these suits will put upon the courts and the Government. An example may be found in the bill of complaint filed by The North American Company (NR. 3–4). Every effort has been made in drafting the complaint to give the impression that the North American subsidiaries are engaged solely and exclusively in an intrastate business. In paragraph (h) of section IV of the complaint, it is alleged that "none of the 'public utility companies' or 'holding companies' or other companies *in which plaintiff owns any stock*, engages in or employs any of its properties in the generation, transmission or distribution of electric energy in interstate commerce" (NR. 4). This allegation may be literally true, but it is entirely misleading. Literally, the allegation merely states that no company *directly below North American* in the corporate structure of the entire North American

bly take six months to build a record in either of these suits comparable to the record built in the Bond and Share suits, upon which the Government has had a corps of men working for nearly a half

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system transmits electric energy in interstate commerce. But in effect the allegation gives the impression that no company anywhere in the North American system under the control of the North American Company is so engaged in interstate commerce.

Such an impression is false. For example, The North American Company does not "*own any stock in*" Union Electric Light and Power Company, of St. Louis, the largest integrated operating group in the North American system; but North American does own all, or almost all, of the voting stock of North American Edison Company, its principal subholding company, which in turn owns one hundred per cent of Union Electric Light and Power Company. This latter company through itself and its subsidiaries, most of which are wholly owned, conducts a substantial business in Missouri, Iowa, and Illinois. And it transmits and sells its power from the Keokuk Dam in Illinois down through Illinois into Missouri and Iowa. Furthermore, North American, through intermediary holding companies, also controls other companies engaged to a substantial degree in the transmission of electric energy across state lines. Indeed, of the total electric energy generated and sold by the North American system, approximately one-fifth is sold in interstate commerce (AR. 38–39, NR. 40).

But those facts do not appear in the complaint filed by The North American Company in the trial court, and, in fact, would seem to be expressly denied until one examines the allegations of denial in the complaint and finds them to be so drafted as to be narrower than they seem. Just this single illustration of the difficulties lurking in a single allegation in a long and complicated bill of complaint indicates the gravity of the task of preparing to defend and of trying either of these suits.

year, assuming that counsel could amicably agree upon a stipulation without a long trial. By the time the trial court would have reached its decision, this Court would have disposed of the Bond and Share suits and would have resolved all the bitterly contested issues of law. The courts' time, the Government's time, and the respondents' time would have been wasted, and the rights of other suitors in other civil and criminal cases would have been delayed.

Respondents have repeatedly shifted their position, maintaining one moment that they are entitled to the immediate trial of their suits in their own right whatever be the consequent burden upon the courts and the Government, and maintaining the next moment that the multiplicity of suits which has resulted is the Government's own contriving, because the Government has not accepted "offers which had previously been made to Government counsel by counsel for the respondents and by representatives of the utility industry to arrange for the selection of a few representative test cases to be consolidated for trial" (answer to the petition for writs of certiorari, p. 7).

Respondents submitted no evidence to the trial court of the nature of these alleged offers of the industry. And the renewal of these alleged offers by counsel for the respondents in the trial court was as illusory as the original offers. Respondents' counsel simply stated that "I undertake to say

that it will not be difficult" for counsel for the Government and counsel for the respondents "to agree upon a group of three or four cases which will present every question that is involved in this multitude of suits, so that every one of these companies *may be* satisfied that its rights will be promptly determined—consolidate them all in one case, in one court, and try them out" (AR. 193, NR. 197). This expresses counsel's opinion that it would not be difficult for the industry and the Government to agree on test suits. But respondents' counsel could not assure the Government that every company would be satisfied with test suits of his selection.

If the industry were desirous of avoiding unnecessary litigation, it is difficult to understand why more than forty suits should have been brought against Government officers to restrain the alleged enforcement of the Act (AR. 77–79, NR. 79–81), after the Attorney General on November 21, 1935 (AR. 40, NR. 42) and the Commission on November 22, 1935 (AR. 43–44, NR. 45) had announced that they would not attempt to enforce the Act pending the outcome of test suits brought by the Government. For that matter, if the respondents themselves were eager to avoid unnecessary litigation, it is difficult to understand why they not only brought suits in the District of Columbia, but also through their subsidiaries in other districts. The conclusion is inescapable that the

willingness of the respondents and the rest of the industry to avoid unnecessary litigation was conditioned upon the Government's accepting such suits as might serve their prearranged plans. Cf. *Burco, Inc.* v. *Whitworth et al.*, 81 F. (2d) 721 (C. C. A. 4th, 1936), *cert. den.*, 297 U. S. 724.

The Government did not ask that these respondents be denied their day in court; the Government simply asked that their cases be deferred and their real interests properly safeguarded until the typical test cases the Government has commenced are disposed of finally by this Court, because that disposition will most certainly greatly reduce, if not eliminate, the trials of respondents' cases. It may be true that there are companies other than the Bond and Share companies which could have been chosen for test cases. The Government, however, was in no position, nor had it a duty, to try all the cases which might appropriately have been chosen as test cases. The trial court was not unreasonable in its concern to relieve the Federal judicial administration of the unnecessary and very real burdens of protracted trials in numerous cases, all having a common purpose.

The judgment of the trial court offers the respondents an interlocutory decree which will as fully protect them during the pendency of the Bond and Share suits as could any permanent decree of the trial court, and offers respondents

their day in court before such interlocutory decree can be vacated. It is very strange that respondents should regard this procedure of interlocutory injunction adequate to protect the constitutional rights of other companies, if respondents' cases are taken as test suits, but not adequate to protect their own rights if the Bond and Share cases are so taken. It is a novel suggestion that those who violate a statute on the grounds of alleged unconstitutionality should have the right to dictate to the Government against which violator the Government should proceed for the purpose of testing the constitutionality of the statute.

Private rights are entitled to protection. But private interests have no claim to obstruct the orderly administration of justice. Private and public interests alike require that broader considerations enter into the treatment of initial constitutional litigation on statutes of far-reaching public importance than into the treatment of exclusively private litigation. As Mr. Chief Justice Taney, in the celebrated case of *Charles River Bridge* v. *Warren Bridge,* 11 Pet. 420, 548, eloquently stated: "While the rights of private property are sacredly guarded, we must not forget, that the community also have rights, and that the happiness and well-being of every citizen depends on their faithful preservation."

CONCLUSION

The petitioners respectfully request that the judgment of the Court of Appeals for the District of Columbia be reversed.

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APPENDIX

THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

[PUBLIC—No. 333—74TH CONGRESS]

AN ACT

To provide for control and regulation of public-utility holding companies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Utility Act of 1935."

TITLE I—CONTROL OF PUBLIC-UTILITY HOLDING COMPANIES

NECESSITY FOR CONTROL OF HOLDING COMPANIES

SECTION 1. (a) Public-utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things, (1) their securities are widely marketed and distributed by means of the mails and instrumentalities of interstate commerce and are sold to a large number of investors in different States; (2) their service, sales, construction, and other contracts and arrangements are often made and performed by means of the mails and instrumentalities of interstate commerce; (3) their subsidiary public-utility companies often sell and transport gas and electric energy by the use of means and instrumentalities of interstate commerce; (4) their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage; (5) their activities extending over many States are not susceptible of effective control by any State and make difficult, if not impossible, effective State regulation of public-utility companies.

(b) Upon the basis of facts disclosed by the reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session), the reports of the Committee on Interstate and Foreign Commerce, House of Representatives, made pursuant to H. Res. 59 (Seventy-second

Congress, first session) and H. J. Res. 572 (Seventy-second Congress, second session) and otherwise disclosed and ascertained, it is hereby declared that the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers of electric energy and natural and manufactured gas, are or may be adversely affected—

(1) when such investors cannot obtain the information necessary to appraise the financial position or earning power of the issuers, because of the absence of uniform standard accounts; when such securities are issued without the approval or consent of the States having jurisdiction over subsidiary public-utility companies; when such securities are issued upon the basis of fictitious or unsound asset values having no fair relation to the sums invested in or the earning capacity of the properties and upon the basis of paper profits from intercompany transactions, or in anticipation of excessive revenues from subsidiary public-utility companies; when such securities are issued by a subsidiary public-utility company under circumstances which subject such company to the burden of supporting an overcapitalized structure and tend to prevent voluntary rate reductions;

(2) when subsidiary public-utility companies are subjected to excessive charges for services, construction work, equipment, and materials, or enter into transactions in which evils result from an absence of arm's-length bargaining or from restraint of free and independent competition; when service, management, construction, and other contracts involve the allocation of charges among subsidiary public-utility companies in different States so as to present problems of regulation which cannot be dealt with effectively by the States;

(3) when control of subsidiary public-utility companies affects the accounting practices and rate, dividend, and other policies of such companies so as to complicate and obstruct State regulation of such companies, or when control of such companies is exerted through disproportionately small investment;

(4) when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties; or

(5) when in any other respect there is lack of economy of management and operation of public-utility companies or lack of efficiency and adequacy of service rendered by such companies, or lack of effective public regulation, or lack of economies in the raising of capital.

(c) When abuses of the character above enumerated become persistent and wide-spread the holding company becomes an agency which unless regulated, is injurious to investors, consumers, and the general public; and it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title.

DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(1) "Person" means an individual or company.

(2) "Company" means a corporation, a partnership, an association, a joint-stock company, a business trust, or an organized group of persons, whether incorporated or not; or any receiver, trustee, or other liquidating agent of any of the foregoing in his capacity as such.

(3) "Electric utility company" means any company which owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale, other than sale to tenants or employees of the company operating such facilities for their own use and not for resale. The Commission, upon application, shall by order declare a company operating any such facilities not to be an electric utility company if the Commission finds that (A) such company is primarily engaged in one or more businesses other than the business of an electric utility company, and by reason of the small amount of electric energy sold by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered an electric utility company for the purposes of this title, or (B) such company is one operating within a single State, and substantially all of its outstanding securities are owned directly or indirectly by another company to which such operating company sells or furnishes electric energy which it generates; such other company uses and does not resell such electric energy, is engaged primarily in manufacturing (other than the manufacturing of electric energy or gas)

and is not controlled by any other company; and by reason of the small amount of electric energy sold or furnished by such operating company to other persons it is not necessary in the public interest or for the protection of investors or consumers that it be considered an electric utility company for the purposes of this title. The filing of an application hereunder in good faith shall exempt such company (and the owner of the facilities operated by such company) from the application of this paragraph until the Commission has acted upon such application. As a condition to the entry of any such order, and as a part thereof, the Commission may require application to be made periodically for a renewal of such order, and may require the filing of such periodic or special reports regarding the business of the company as the Commission may find necessary or appropriate to insure that such company continues to be entitled to such exemption during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke such order whenever it finds that the conditions specified in clause (A) or (B) are not satisfied in the case of such company. Any action of the Commission under the preceding sentence shall be by order. Application under this paragraph may be made by the company in respect of which the order is to be issued or by the owner of the facilities operated by such company. Any order issued under this paragraph shall apply equally to such company and such owner. The Commission may by rules or regulations conditionally or unconditionally provide that any specified class or classes of companies which it determines to satisfy the conditions specified in clause (A) or (B), and the owners of the facilities operated by such companies, shall not be deemed electric utility companies within the meaning of this paragraph.

(4) "Gas utility company" means any company which owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. The Commission, upon application, shall by order declare a company operating any such facilities not to be a gas utility company if the Commission finds that (A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered a gas utility company for the purposes of this title. The filing of an

application hereunder in good faith shall exempt such company (and the owner of the facilities operated by such company) from the application of this paragraph until the Commission has acted upon such application. As a condition to the entry of any such order, and as a part thereof, the Commission may require application to be made periodically for a renewal of such order, and may require the filing of such periodic or special reports regarding the business of the company as the Commission may find necessary or appropriate to insure that such company continues to be entitled to such exemption during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke such order whenever it finds that the conditions specified in clauses (A) and (B) are not satisfied in the case of such company. Any action of the Commission under the preceding sentence shall be by order. Application under this paragraph may be made by the company in respect of which the order is to be issued or by the owner of the facilities operated by such company. Any order issued under this paragraph shall apply equally to such company and such owner. The Commission may by rules or regulations conditionally or unconditionally provide that any specified class or classes of companies which it determines to satisfy the conditions specified in clauses (A) and (B), and the owners of the facilities operated by such companies, shall not be deemed gas utility companies within the meaning of this paragraph.

(5) "Public-utility company" means an electric utility company or a gas utility company.

(6) "Commission" means the Securities and Exchange Commission.

(7) "Holding company" means—

(A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a holding company; and

(B) any person which the Commission determines, after notice and opportunity for hearing, directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon holding companies.

143–148). Each of these twelve defendants is shown itself to be guilty of violations which oblige it to register as a holding company *in its own right*. Such violations and such duty to register are quite independent of the fact that these twelve defendants are subsidiaries of Bond and Share. None of these twelve defendants, other than American Gas, is alleged to be engaged in the performance of service contracts. Hence none of them, other than American Gas, is alleged to violate section 4 (a) (2) relating to service contracts.

In its brief on the constitutionality of the registration provisions in the Bond and Share suits (pp. 108–118), the Government expressly points out that its case does not turn, as respondents mistakenly inform this Court, upon any disregard of the corporate entities in the Bond and Share system. As the Government there states (pp. 108–109):

> The attempt is constantly made to confuse the question now being considered by saying that the corporate entities of the companies in the Bond and Share system cannot be disregarded, and for that reason the Congress may not validly regulate in any degree whatever the action of the holding-company defendants. But the question of disregarding or piercing the corporate entity is not in any way involved in the question now before this Court. Whether

> or not the holding-company defendants would be liable for the torts committed by their subsidiaries, or would be liable upon contracts made by their subsidiaries, or could validly be served by process upon a subsidiary, is not involved in this case. Had the Congress merely provided that a holding company must register if it does certain acts, then a court in a given case might be called upon to decide whether it ought to disregard the corporate fiction when the holding company is shown to do the acts through a subsidiary company. The Congress has avoided this difficulty by the express inclusion in the statute of section 4 (a) (6).

The respondents assert that the Government treats the Bond and Share companies as a single clan. But the Government treats the Bond and Share companies no more as a single clan that it does any other group of companies in a single holding-company system as defined by section 2 (a) (9) of the Act. And the respondents cannot deny that they and their companies each constitute a holding-company system as defined by the Act. And as we have shown (see the Government's principal brief in the cases at bar, pp. 58–59), this issue of control is the same in the Bond and Share suits as it would be in respondents' suits. On page 62 of its Factual Brief in the Bond and Share suits, the Govern-

ment points out that a holding company is distinguished from an investment company by the control it is in a position to exercise over its subsidiaries.[1] The Government further states on page

[1] In support of this assertion the Government quotes in a footnote, pp. 63–64, from the communication of the President of the respondent American Water Works and Electric Company to the Chairman of the House Committee on Interstate and Foreign Commerce, under date of March 30, 1935, to the following effect:

"Investment trusts are based upon the principle of diversification of risk, and they carry that diversification far beyond any possibilities open to the utility holding companies. They buy, sell, or hold Government and municipal bonds, listed securities, the bonds, debentures, and preferred stocks and common stocks of railroads, utilities, manufacturing companies, and chain and department stores, scattered throughout many industries and sections of the country. Those that invest in unlisted securities at all do so only in exceptional and minor instances. Because their investments are so widely diversified among industries and companies it is impossible for them to provide management for the companies in which they own securities, and because they confine themselves mainly to the purchase of listed securities and minority interests; they do not need management control of the companies whose securities they buy. If they lose confidence in the management of a company in which they are interested, they have a ready market for such of its securities as they may own, and they can sell them with only such loss as open market conditions may require.

"But from the very nature of the case a utility holding company cannot thus protect itself, and it must therefore have the power to insure efficient management of the operating companies in its system. In order to perform its necessary function of providing the junior capital for the oper-

8 of the same brief: "A holding company may exercise control which its voting-stock ownership in another company gives it in divers ways and by divers metehods. If control exists, its frank avowal, as an essential ingredient of holding-company management is preferable to its subtle concealment. The existence of control may be of much greater significance than the particular form of its exercise."

Respondents have never failed to assert their control over their subsidiaries, even in the instant proceedings, when they found it advantageous so to do.

Respondents have alleged that they are not entitled to the exemption from the Act to which they

---

ating companies, it must buy and hold their common stocks, which in the main are not and cannot be listed, and therefore cannot be sold on the open market. To get the money to buy those common stocks it must sell its own securities. It cannot sell its own securities unless it can assure those who purchase them that it is so organized and conducted that it can at all times provide sound and efficient management for the operating companies whose junior securities it owns and must continue to own. It cannot insure such management without maintaining the voting control of its subsidiaries who may prove to be inefficient. In the utility business, just as in all other business, control must be vested in the owners who provide the junior capital. They take the principal risk and they will not take that risk unless they have the power to *control* the conduct of the business which they own and thus protect themselves as far as possible against loss." [Italics supplied.]

would be entitled under the terms of the Act if they did not control their subsidiaries (AR. 2–3, NR. 5–6). By such allegation respondents acknowledge their control over their subsidiaries in an effort to avoid being met with the contention that they have no standing to question the constitutionality of an Act which may never be applicable to them.

Furthermore, to meet the argument that two of their subsidiaries have brought suits in other jurisdictions, respondents assert that they *will bring* these two subsidiaries into their own cases if the petitioners wish them to do so. Respondents go further and assert that they *will also bring* in any other of their subsidiaries (respondents' brief, p. 73n). For such purposes respondents seem to be quite confident of their ability to control their own "clans."

For the English practice regarding the discretionary power of the trial court to grant a stay where the parties and issues are not identical, see

Amos v. *Chadwick,* L. R. 4 Ch. Div. 869 (1877);

Amos v. *Chadwick,* L. R. 9 Ch. Div. 459 (1878);

Bennett v. *Lord Bury,* 42 L. T. (N. S.) 480 (Common Pleas, 1880);

Colledge v. *Pike,* 56 L. T. 124 (1887);

Multiple Utilities Company, Ltd., v. *Souch*, 46 R. P. C. 402 (Court of Appeals, 1929).

Respectfully submitted.

HOMER CUMMINGS,
Attorney General.

STANLEY REED,
Solicitor General.

According to the New York Times of November 10, the Circuit Court of Appeals for the Third Circuit on November 9, "postponed indefinitely a hearing on appeals brought by the Pittsburgh Steel Company against rulings of the National Labor Relations Board."

Judge J. Warren Davis is quoted as saying: "It seems to me no use in indulging in mental acrobatics about this matter when the United States Supreme Court may settle everything for us in a very short time."

FILE COPY

SEP 9 193

CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 221

JAMES M. LANDIS, *et al.*,

Petitioners,

vs.

THE NORTH AMERICAN COMPANY,

Respondent.

No. 222

JAMES M. LANDIS, *et al.*,

Petitioners,

vs.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED,

Respondent.

ANSWER OF RESPONDENTS TO PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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INDEX

	PAGE
Decree of Court Below	1
Respondent's Suits	2
Statement of Facts	2
Reasons for Denying the Writ	8
The Only Question Presented	8
I. No Question of General Importance Is Presented.	10
II. The Unprecedented Character of the Stay	11
III. The Damages to the Respondents Shown by Their Bills	13
IV. The Damages to the Respondents Caused by the Stay Itself	14
V. The Counter-Reasons Urged for the Stay	18
VI. The Alleged Insufficiency of the Bills	20
VII. The Authorities	21
The Authorities Showing That the Stay in Question Constitutes a Gross Abuse of Discretion:	21
The Cases Cited by Petitioners	23

TABLE OF CASES AND STATUTES CITED.

PAGE

Bergholm v. *Peoria Life Ins. Co.*, 63 S. W. (2d) 1064 (Texas 1933) 23
Bicalky Fan Co. v. *Mosier & Summers, Inc.*, 177 A. D. 372 (N. Y. 1917) 22
Boynton v. *Brown & Mathes*, 145 S. W. 242, 103 Ark. 513 (1912) 23

Cates v. *Mayes*, 12 S. W. 51 (Supreme Ct. Texas 1889) 23
Checker Cab Mfg. Co. v. *Checker Taxi Co.*, 26 F. (2d) 752 (N. D. Ill. 1928) 22
City of Detroit v. *Detroit City Ry. Co.*, 55 Fed. 569 (E. D. Mich. 1893) 22
Commonwealth Trust Company v. *Bradford*, 297 U. S. 613 (1936) 27
Clark v. *Vilas National Bank*, 22 A. D. 605 (N. Y. 1897) 22

Di Giovanni v. *Camden Fire Insurance Association*, 296 U. S. 64 27
Dolbeer v. *Stout*, 139 N. Y. 486 (1893) 22
Dalgarn v. *New Orleans Land Co.*, 109 So. 345, 161 La. 653 (1926) 22
Dumphy v. *Belden*, 57 Cal. 427 23
Dunfee v. *Childs*, 53 S. E. 209, 59 W. Va. 225 (1906). 22

Electric Vehicle Co. v. *Barney*, 143 Fed. 551 (S. D. N. Y. 1906) 22
Enelow v. *New York Life Insurance Co.*, 293 U. S. 379 25

Farmers' Co-op. Gin Co. v. *Harper*, 268 Pac. 256, 131 Okla. 224 (1928) 23
Friedman v. *Harrington*, 56 Fed. 860 (C. C. D. Mass., 1893) 25

Gordon v. *Ominsky*, 294 U. S. 186 26
Granger v. *Judge of Wayne Circuit*, 27 Mich. 406 (1873) 23

PAGE

Jefferson Standard Life Ins. Co. v. *Keeton*, 292 Fed. 53 (C. C. A. 4th 1923) 22
Jenkins v. *Baker*, 91 A. D. 400 (N. Y. 1904) 22
Johnson v. *N. Y. O. & W. Ry. Co.*, 3 Fed. Supp. 80 (E. D. N. Y. 1931) 22

Kansas City Southern Railway v. *United States*, 282 U. S. 760 23
Kirkpatrick v. *Eastern Milling & Export Co.*, 135 Fed. 144 (D. N. J. 1904) 22

Loring v. *Marsh*, Fed. Cas. No. 8514 (C. C. Mass. 1864) 21

Mercantile Trust Co. v. *Lamoille Va. R. Co.*, Fed. Cas. No. 9432 (C. C. Vt. 1879) 21

National Motor Bearing Co., Inc. v. *Consolidated Motor Parts Co.*, 6 Fed. Supp. 811, 812 (E. D. N. Y. 1934) 22

Ogden v. *Pioneer Iron Works*, 91 A. D. 394 (N. Y. 1904) 22

Penn General Casualty Co. v. *Pennsylvania*, 294 U. S. 189 26
Pennsylvania v. *Williams*, 294 U. S. 176 26
Public Utility Holding Company Act of 1935 (49 Stat. 803) 2

Rosenberg v. *Slotchin*, 181 A. D. 137, 138 (N. Y. 1917) 22

Swift v. *Finnigan*, 53 A. D. 76 (N. Y. 1900) 22
Sliossburg v. *New York Life Insurance Co.*, 244 N. Y. 482 (1927) 23

Toplitz v. *Miller*, 32 Fed. 744 (S. D. N. Y. 1887) ... 22

Wadleigh v. *Veazie*, Fed. Cas. No. 17,031 (C. C. Me. 1838) 21
Wood v. *Lake*, 13 Wisc. 84 (1860) 23

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ANSWER OF RESPONDENTS TO PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

DECREE OF COURT BELOW.

The petitioners seek to have this Court review identical decrees of the United States Court of Appeals for the District of Columbia entered on June 22, 1936, reversing interlocutory orders of the Supreme Court of the District of

Columbia which granted motions of the petitioners to stay all proceedings in respondents' suits against the petitioners "until the validity" of the Public Utility Holding Company Act of 1935 "has been determined by the Supreme Court of the United States in the case of the *Securities and Exchange Commission vs. Electric Bond and Share Company, et al.*, now pending in the District Court of the United States for the Southern District of New York or until that case is otherwise terminated".

RESPONDENTS' SUITS.

The respondents' suits are bills in equity to enjoin the petitioners (the members of the Securities and Exchange Commission, the Attorney General, and the Postmaster General) from enforcing the Public Utility Holding Company Act of 1935 (49 Stat. 803—hereinafter referred to as "the Act") against the respondents on the ground that the Act is unconstitutional as applied to the respondents.

STATEMENT OF FACTS.

The respondents are holding companies of the class which is required by the Act to register under it on or before December 1, 1935. They have not so registered, and their bills, which were filed shortly before that date, declared their intention not to register. The bills invoke the equitable jurisdiction of the court, because of the irreparable damages which they show that the Act has already caused the respondents, and which, as the bills also show, the respondents will continue to suffer in ever increasing amounts until they obtain the *final* relief for which their bills pray.

The bill of the respondent, The North American Company, was filed on November 26, 1935,* (R., p. 2)** and the bill of the respondent, American Water Works and Electric Company, Incorporated, was filed the next day, November 27, 1935 (A. R., p. 2).

On the same day that The North American Company filed its bill, the Commission filed its bill against Electric Bond and Share Company and certain of its corporate subsidiaries, in the United States District Court for the Southern District of New York. This case (hereinafter called "the *Bond and Share* case") is the case in favor of which the respondents' cases have been stayed as aforesaid.† The bill filed by the Commission prays for a writ of mandamus to compel the defendants to register and also seeks to enjoin them from engaging in any of the activities prohibited to unregistered holding companies by the Act.

The respondents' bills base their prayers for equitable relief against the enforcement of the Act primarily *on the fact that the petitioners are at one and the same time vehemently asserting its constitutionality against the respondents‡ while on the other hand refusing to enforce it against them,*—although (since the respondents have refused to register) the petitioners could immediately do so by the simple method of a prosecution for failure to register or by mandamus to compel registration,—and on the

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*In their statement of facts petitioners state that respondents' suits were for the purpose of enjoining *"in limine"* the enforcement of the Act "before it could be put into practical operation". The provisions of the Act foreclosing the use of the mails or any instrumentalities of interstate commerce to unregistered holding companies became effective on December 1, 1935.

**References to the Record are to the printed Record in the *North American Company* case except where otherwise indicated.

†On December 21, 1935, the original bill was superseded by an amended and supplemental bill (R. p. 59). Hereafter all references will be to this amended and supplemental bill.

‡That the Act, if constitutional as to the respondents, *applies* to them is undisputed.

further fact that the impasse thus created is causing the respondents immense and irreparable pecuniary damages which will necessarily accumulate until the respondents obtain a final decision that the Act is unconstitutional as against them.

As to these damages, both bills show in the clearest possible manner (and by detailed reference to the more important provisions of the Act) how the many drastic prohibitions of the Act with reference to unregistered holding companies will cast such a cloud upon the legality of respondents' most characteristic and necessary corporate activities as virtually to paralyze their business for the period during which the validity of the Act as to them remains undetermined (R., pp. 25-31).* And the bills *also* show that the respondents cannot avoid these damages by registering under the Act—that, in fact, registering might well increase their damages,—since by registering the respondents, in place of the outright prohibitions of the Act with respect to unregistered companies, would subject themselves (a) *first* to a regimentation by the Commission so all-pervasive, rigorous, complicated, and confusing as to be equally paralyzing to the normal conduct of their business, and (b) *eventually* to possible complete corporate extinction under the notorious "death sentence" provision of the Act (Section 11). (R., pp. 9-23).

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*That this is also the petitioners' view is clearly enough shown by the following statement made by petitioner Landis, chairman of the Commission, in a press statement of November 8, 1935 (New York Times). He stated that

> "unless a holding company registers, the validity of any issue of securities which it may offer and of all acquisitions of property and of contracts made by it would be in question at least until a *final* decision upon the issue of constitutionality was handed down by the Supreme Court". (Italics ours. See discussion, *infra* p. 13 of petitioner's offer of a *temporary* injunction as an alleged justification of their stay.)

There cannot, therefore, be the slightest question that both bills bring themselves within one of the recognized categories of cases in which injunctive relief is granted against the enforcement of unconstitutional laws prior to actual suits to enforce them and prior also to threats of *immediate* enforcement.*

Within a few days after the filing of respondents' bills five other holding companies filed their bills in the court below seeking, on the same grounds, substantially the same relief sought by the respondents.†

On December 7, 1935, before any answers had been filed by the petitioners herein in the respondents' suits or in any of the other above-mentioned suits in the court below, or by the defendants in the *Bond and Share* case, the petitioners moved for the stay which they obtained in the lower court as above stated. The motion was made and was granted in all the suits in the trial court.

When the motions for the stays were made there were also pending approximately forty other suits in different United States district courts, all seeking substantially the same relief. These suits, or most of them, named as defendants the present petitioners, or some of them, as well as the local federal district attorneys and other local federal officials. The present petitioners declined, however, to appear in these suits voluntarily, and by the appropriate motions on special appearances obtained their dismissal as against themselves (R., p. 238). As a consequence, the only argument in support of their stays which the petitioners now make based on these suits in the district courts is that

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*We shall later comment briefly (*infra*, p. 20) on the suggestions in the Petition for Certiorari that the bills do not show the sort of situation entitling a complainant to injunctive relief against an unconstitutional act.

†One of these bills has subsequently been withdrawn.

they apprehend that some of these suits may be recommenced against them in the District of Columbia. None of them has as yet been so recommenced.

The reasons for the stay advanced in the motion were (1) the pendency of the above suits in the District of Columbia and the district courts attacking the constitutionality of the Act; (2) that the Commission, in order to secure an early determination of the constitutionality of the Act, had commenced the *Bond and Share* case, and that this suit would be prosecuted with all due diligence to the Supreme Court; and (3) that the great number of the other pending suits would "tend to clog the courts, overtax the facilities of the Government and make against that orderly and economical disposition of the controversy which is the Government's aim" (R., pp. 31-32).

The original motion, which was made by the Attorney General and by the general counsel for the Commission, was itself unverified and was not supported by a single affidavit; and, with respect to the inability of the Government departments to handle more than one of these cases until after the final decision of the *Bond and Share* case, *the motion does not contain a single allegation, except the above quoted generality about "over-taxing the facilities of the Government"*. Neither did the respondents see fit subsequently to file any affidavits in support of this rhetoric, although they later made extensive additions to the record in other respects.*

The petitioners do not now assert and never have asserted that the issues in the *Bond and Share* case are

*In this connection we may refer to Equity Rule 51 of the Supreme Court of the District of Columbia which requires applications for continuances beyond the term to be supported by affidavit. Law Rule 45 requires all applications for continuances to be so supported. The Rules do not specifically refer to "stays".

identical with those of the respondents' cases. They assert only that the issues in all the cases are such that the decision in the *Bond and Share* case will "tend to simplify" the issues in respondents' cases.*

In open court during the oral argument of the motion counsel for the respondents reviewed the offers which had previously been made to Government counsel by counsel for the respondents and by representatives of the utility industry to arrange for the selection of a few representative test cases, to be consolidated for trial. After stating that Government counsel had ignored these offers, counsel for the respondents renewed the offer in open court. This proposal was openly rejected by the Attorney General (R., p. 249).

On January 6, 1936, the trial court filed its aforesaid opinion granting the stay (R., pp. 42-46).

On February 17, 1936, the United States Court of Appeals for the District of Columbia allowed a special appeal from the stay order (R., p. 47).**

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*The striking differences between the Bond and Share system and the respondents' systems on such vital facts as, for example, whether their businesses constitute interstate commerce and are therefore subject to the jurisdiction of the Federal Government, is apparent from a comparison of the Commission's bill of complaint in the *Bond and Share* case (R., pp. 106-233) with the bills in respondents' suits (R., pp. 2-32; A. R., pp. 2-30). Such a comparison is briefly made in the footnote at page 15, *infra*.

**On February 19, 1936, counsel for the defendants below filed a motion with accompanying affidavits, attaching as exhibits thereto, among others, a copy of the amended and supplemental bill in said *Electric Bond and Share* case and the answer in said suit filed long after the decision of the trial court—in order to make a formal record of the statements made in argument on said motion for the stay (R., pp. 48-233). Pages 61 to 233 of the record relate entirely to the *Electric Bond and Share* case.

On February 26, 1936, respondents answered this motion to make a record after the fact but agreed to waive the irregularities and informalities, and stipulated that said affidavit with accompanying exhibits might be considered as a part of the record on such special appeal (R., pp. 233-236, 238-239).

The appeal was argued in the Court of Appeals April 8, 1936, and decided June 22, 1936 (R., pp. 266-267).

As the Petition for Certiorari has had the effect of continuing the stay despite the reversal by the Court of Appeals, the stay will therefore have already run for about ten months before the Petition for Certiorari comes before this Court. In other words, if the stay was improvidently granted (as the Court of Appeals has held) the petitioners will, by their unwarranted and unprecedented motion, have obtained a delay to which they were not entitled of at least ten months, during all of which time the respondents have been suffering the irreparable damages alleged in their bills.

REASONS FOR DENYING THE WRIT.

The Only Question Presented.

We respectfully submit that the sections of the Petition for Certiorari entitled "Specifications of Error to be Urged", and "Reasons for Granting the Writs" misconceive and misstate both the actual decision of the Court of Appeals and its implications. We refer particularly to the second, third and fourth specifications of error (Petition, pp. 23-24) and to the statements contained under "Reason" (1) as to what the Court of Appeals "has decided" and as to what its decision "obliges" a lower court to do (Petition, p. 24).

We submit that the one and only question before the Court of Appeals and the question to which it rigidly confined its decision was whether, on the facts shown by this record, the trial court abused its discretion in granting the particular stay of proceedings which it did grant.

This is made clear by the language of the opinions themselves.

Judge Van Orsdel's opinion, concurred in by Judge Martin, states (R., p. 269):

> *"The sole question,* therefore, for our consideration is whether or not the court below was justified in granting the stay in these cases; whether or not in so doing the court *abused its discretionary power* in the control of its docket." (Italics ours.)

Judge Groner's separate concurring opinion states (R., p. 271):

> "On this appeal the question for our decision is whether the lower court had the right and power to enter the order—and if it had the power, whether the entry of the order in the form in which it appears was an abuse of discretion."

Judge Groner then goes on to state:

> "Undoubtedly a Federal District Court may grant a stay in a case pending before it * * * ," and that "Ordinarily such orders are within the sound discretion of the Court."

And after discussing the facts he concludes as follows (R., p. 273):

> "But the present order goes beyond that limit [of discretion] and in that respect was *improvidently entered."* (Italics ours.)

Judge Stephens' dissenting opinion begins with the following sentence (R., p. 273):

> "I am unable to agree that the trial court abused its discretion."

It is clear from the above that the "power" of the court to grant stays was taken for granted by all the judges, and

that the decision of the majority is simply and solely to the effect that *this particular stay,* constituted, on the particular facts in this case, an abuse of a judicial power the limits of which are necessarily defined in terms of sound judicial discretion.

Specifically, then, the only question presented by the present Petition is simply this: whether, on the facts shown by the record, the trial court abused its discretion in staying the respondents' suits *during a period which commenced even before answers to the bills had become due and which will not end until the Bond and Share case is finally decided by this Court or otherwise finally disposed of.** It goes without saying (a) that no question is presented here as to what *other* "stay" or other delay the petitioners might have been entitled to had they asked for it, and (b) that the vacation of the stay order will not prejudice the right of the petitioners to have granted to them any other extension of time, adjournment, or other delay in the case to which they may be able to show themselves entitled at any time hereafter.

I.

NO QUESTION OF GENERAL IMPORTANCE IS PRESENTED.

Petitioners themselves do not urge that their Petition for Certiorari involves any constitutional question, important or otherwise. Neither does it involve any question of general public importance—since no one doubts the inherent general "power" or "jurisdiction" of all courts to grant, without

*The only qualification of the stay is that the *Bond and Share* case be prosecuted with due diligence by the petitioners. Delays, however protracted, that may be caused by the *Bond and Share* defendants are not provided for.

the specific authorization of a statute, in a proper case, a "stay" of any suit before it, *i.e.*, a cessation of *all* further proceedings therein as distinguished from the granting of delays or adjournments of specific steps therein. It is therefore idle to argue, as petitioners seem to do, that the case is of general importance because it presents a question as to the "power" of the lower court to grant the stay in question here—except in the sense that any court may be said to have acted without "power" when the boundaries of the particular "power" exercised are (as they obviously are here) necessarily co-terminous with the limits of sound judicial discretion, and where those limits have been transgressed. In other words, it is mere verbal fencing for the petitioners to argue that the instant case presents *anything whatever beyond the question whether on the facts shown by the record the lower court abused its discretion in granting the particular form of stay which it did grant.* We respectfully submit that the foregoing alone is sufficient reason for denying the petition.

However, should the Court not consider the above sufficient to dispose of the matter, we submit the following in addition:

II.

THE UNPRECEDENTED CHARACTER OF THE STAY.

We think it is indisputable that the stay in question is absolutely unprecedented.* It is a stay *in limine,* to enable

*We shall show below that none of the cases cited by petitioners affords the slightest support for it, even by way of dictum.

the party obtaining it to prosecute *to final judgment in another court against another litigant of his own selection another lawsuit,* commenced simultaneously with the stayed suit,** to which preferred suit the stayed plaintiff is not made or invited to become a party (and to which he has no right to become a party on his own motion); and the *only* pretext for the stay is that the stayed suit is one of a large number of other suits commenced or about to be commenced against the defendant to the stayed suit, in which other suits the issues are such that the final judgment in the preferred suit *may* determine the issues in the stayed suit, or "substantially narrow them."† In short (since the stay was obtained immediately after the filing of respondents' bills, and is to run until the final decision in the preferred suit), the situation is in reality (as Judge Groner pointed out,—R., p. 272) precisely the same as if a litigant, threatened with a multiplicity of suits against him, all involving somewhat similar but concededly not identical issues, instead of bringing the usual bill in equity against his adversaries to combine their cases in one suit, takes the initiative by himself selecting only *one* of them as a defendant, and then, by separate independent bills against the others, enjoins these others from *commencing* their actions against him until he has disposed of his single hand-picked adversary! We believe our statement will pass unchallenged that no such suit has ever been attempted.

**The second of respondents' suits (*The American Water Works* case) was commenced only the day after the petitioners' suit against Bond and Share (A. R., p. 2).

†This is the petitioners' own language (Petition, p. 4).

III.

THE DAMAGES TO THE RESPONDENTS SHOWN BY THEIR BILLS.

But this is not by any means all. The respondents are relying not merely on the conceded general right of every litigant, *even where no special pecuniary losses from delays can be shown,* to insist that his suit be tried as promptly as may be consistent with fairness (a) to other litigants in the same court and (b) to his own particular adversary. The bills of the respondents show beyond peradventure how every day's delay (whether necessary or unnecessary) in obtaining a *final* determination that the Act is unconstitutional as to them, is causing them immense and irreparable damages. There is absolutely no attempt by the petitioners to deny that such is the fact,—in the light of which their effort to justify the stay by their offer of a *temporary* injunction pending the final decision of the *Bond and Share* case, becomes, we submit, wholly absurd.*

And the same is true of the petitioners' arguments based on their assurances that the respondents will not be criminally prosecuted for not registering, and that they may register under the Act "without prejudice". Here again, the respondents' bills show in the clearest possible manner (as the majority opinions of the Court of Appeals point out) that the really compelling reason which has driven the respondents to commence their suits is precisely the fact that the petitioners are at one and the same time vehe-

*See quotation, *supra,* page 4, from press release of Commissioner Landis only two weeks before the filing of respondents' bills.

mently asserting the Act to be constitutional against the respondents while refusing point-blank to take any action against them for their refusal to register. We believe the Court will be sufficiently familiar with the general provisions of the Act (the more drastic of which are fully set forth in the bills of complaint—R., pp. 25-28) to realize that until the Act is *finally* declared to be unconstitutional as against these respondents (assuming it to be unconstitutional, as their bills allege), the cloud which its existence on the statute books will cast on the validity of practically every important act done by them in their essential corporate activities will practically paralyze the normal conduct of their business.

And the bills also show clearly exactly why the irreparable damages which the respondents are thus daily incurring as unregistered companies would be, if anything, greater if they registered under the Act, and that these damages would not be in the least minimized by the petitioners' offer to permit the respondents to register "without prejudice" (R., pp. 9-22).

IV.

THE DAMAGES TO THE RESPONDENTS CAUSED BY THE STAY ITSELF.

It is obvious, therefore, that (despite the petitioners' offer of a temporary injunction and their assurances that the respondents may register under the Act "without prejudice") *the stay itself* will cause the respondents immense and continuing irreparable pecuniary damages, unless

(a) the final decision in the *Bond and Share* case is had before final decisions could, *but for the*

stay, have been had in the respondents' cases; *and unless*

(b) the decision in that case conclusively establishes that the Act is unconstitutional *against the respondents,* whatever it may decide as to Bond and Share.

The petitioners have not attempted to support their stay on any such theory as this. Indeed, it is clearly readable between the lines of their Petition for Certiorari that the petitioners have deliberately selected Bond and Share as the adversary party in their single "test" under the Act because they believe that they stand a better chance to get the constitutionality of the Act upheld against holding companies of the type represented by the Bond and Share system than against companies like the respondents, which are not engaged in interstate commerce, and against which the petitioners cannot prove the allegations of such commerce which they make in their bill against the Bond and Share group.*

*The Commission's bill in the *Bond and Share* case alleges that that company is the top holding company of a utility system operating in some thirty-two different states, many of which are inter-connected through interstate transmission facilities and that a substantial portion of these utility companies are engaged regularly in the interstate transmission and sale of electric energy and gas (R., pp. 65-66; 74-78). It alleges further that Bond and Share and one of its principal subsidiary holding companies, its co-defendant, American Gas and Electric Company, so *dominate and control* all of their subsidiary companies engaged in such interstate transmission and sale of electricity and gas that *Bond and Share, and American Gas, are themselves, in their own corporate capacity, engaged in the transmission and sale in interstate commerce of electric energy and gas* (R., pp. 74-82).

It further alleges that Bond and Share, through its wholly owned and completely dominated subsidiaries, Ebasco Services, Incorporated, and Phoenix Engineering Corporation, has negotiated, entered

This is the reason why the petitioners themselves do not assert that the issues in the *Bond and Share* case and the cases at bar are identical, but merely that the decision

---

into and is performing service contracts with operating subsidiaries of certain holding company subsidiaries of Bond and Share (R., pp. 83-99). The great detail with which these service contracts and their subject matter is alleged, and the allegations that their performance amounts to a constant and regular traffic in interstate commerce by Bond and Share, show clearly that the Commission regards these facts as the facts *par excellence*, which will bring Bond and Share within the constitutional pale of the Act, if nothing else will.

The bills of complaint of both respondents, on the other hand, show that neither is engaged in activities in any way comparable to those alleged by the Commission against the Bond and Share companies.

The bill of each respondent alleges that it is not engaged in the business of sending or transporting or causing to be sent or transported goods or commodities in interstate commerce, and that such use as it makes of the mails or the instrumentalities of interstate commerce is merely incidental to the conduct of its intrastate business (R., p. 7).

The American Water Works bill shows that but little more than half of its capital assets consists directly or indirectly of investments in "public-utility companies" as that term is defined in the Act, approximately 40% of its total capital assets being represented by direct ownership of securities of water works companies. Substantially all of the remainder of its capital assets are represented by direct ownership of over 95% of the outstanding voting securities and certain other securities of a single holding company, The West Penn Electric Company, the great majority of the assets of which consist of substantially all of the common stock of two electric utility companies, which with their electric utility subsidiaries operate in a single area falling within adjacent parts of five States (A. R., pp. 4-8).

The North American bill shows that the public utility subsidiaries of that company comprise in the main, electric properties, with some small amount of gas and transportation properties, centered primarily in certain large urban communities; and that its subsidiary companies which do own and operate facilities for transmission of electric energy in interstate commerce engage in such activities as an incidental part of the predominantly intrastate business of the integrated systems to which they belong (R., pp. 4-7).

Moreover, as contrasted with the extensive and comprehensive services which the Commission's bill alleges that Bond and Share

in the *Bond and Share* case will "simplify the issues" and serve as a "valuable precedent" in the cases at bar.

Thus, even if the Act should be upheld in the *Bond and Share* case, the result of this stay to the respondents would be that probably more than two years after their suits had been commenced they would still be incurring the same continuing irreparable losses *and would continue to incur them for possibly another two years,* until respondents could proceed with the prosecution of their suits and show that they do not belong to the type of holding companies as to which Congress can constitutionally legislate in the manner set out in the Act.

In addition, as we pointed out in the court below, there is no certainty that there ever will be any decision, final or otherwise, in the Bond and Share case,—since Bond and Share might possibly determine to register or to put through some reorganization under which the present suit against it would be dismissed or discontinued. In which case also the stay itself will have caused the respondents to suffer irreparable damages for a wholly unnecessary period.

Company and American Gas and Electric Company render to their utility subsidiaries, *the North American bill shows that company not to be a party to any construction, sale or service contracts, and that it renders no such services to its subsidiary companies* (R., p. 7), and the American Water Works bill shows that that company is not engaged in activities in any way comparable to those in which it is alleged Bond and Share are engaged.

The extreme importance which the Commission attaches to the above-mentioned allegations of its bill against Bond and Share is manifested by the fact that a major part of the bill is devoted to such allegations.

V.

THE COUNTER-REASONS URGED FOR THE STAY.

The irreparable damages to the respondents caused *by the stay itself* being then undeniable, what counter-reasons have the petitioners urged in support of their stay?

Simply and solely that the Government should not be required to take *even the preliminary steps* in pleading and preparing for trial in *any* other case under the Act until it has prepared for trial, tried, and briefed and argued on final appeal its own specially selected "test" case against Bond and Share. Stripped of all rhetoric and sophistry, what the petitioners are asking for, and the "orderly and economical disposition of the controversy" which they say "is the Government's aim", is a one-hundred-per-cent. monopoly of the litigation involving the constitutionality of the Act until their own *single* case against their own specially selected defendant is finally determined by this Court. For it goes without saying that they did not need the unqualified stay they obtained for any other purpose. Without such a stay, if the preparation of the *Bond and Share* suit for trial, or the trial of it, should become at any time so arduous and exacting as to demand the practically entire time of the entire personnel of the Government legal departments assigned to the enforcement of the Act, the trial court would entertain a motion for, *and, on affidavits containing sufficiently specific allegations to justify it,* would grant any reasonable extension of time, adjournment, or other delay which might be shown to be necessary.

We have already stated that the unverified motion for the stay was wholly unsupported by affidavits, and the Court will also no doubt have observed that the allegations of the motion itself with regard to the situation in which the petitioners find themselves are so vague and general as to be wholly without probative value.*

The foregoing applies, of course, as well to the suits in the various district courts as to the other suits in the Supreme Court of the District of Columbia. As to the suits in the district courts, moreover, the complainants in them of course realized that they could obtain no relief in them against the petitioners unless the petitioners were willing to appear therein voluntarily, since the petitioners cannot be sued outside the District of Columbia without their consent. This the petitioners have refused to give, and, as the record shows (p. 238), they have already, by the appropriate motions under special appearances, obtained the dismissal of these cases against them. Their alleged apprehension that these cases *may* be recommenced against them in the District of Columbia (not one of them has yet been so recommenced) is surely the flimsiest of pretexts for the continued insistence by the petitioners that they are entitled to a stay of the sort which was granted to them by the trial court. If and when any of these cases

*In this connection we believe it is fair to state to the Court that the *Bond and Share* case will be tried on an agreed stipulation as to the facts in that case, without the taking of any testimony whatever, *and that the stipulation was signed by the parties on June 30 of this year.* So far, therefore, as the *Bond and Share* case is concerned, there remains for the Government nothing whatever except the briefing and argument of the case before the trial court and on appeal. And yet, in spite of this, *the Government still insists that it should not be required even to answer the respondents' bills until after the final decision of this Court in the Bond and Share case.*

are recommenced, petitioners can move in *them* for any stay or adjournment to which they may be entitled.

And lastly, and with respect to *all* the other cases brought against them, petitioners' point-blank refusal even to consider counsel's offer (R., p. 249) to agree upon a few test cases under the Act, to be consolidated for trial, in addition to the *Bond and Share* case, conclusively shows, we believe, that petitioners' motive in moving for the stay in question cannot possibly have been the fear of any real "multiplicity" of suits against them under the Act.

VI.

THE ALLEGED INSUFFICIENCY OF THE BILLS.

The petitioners intimate in various places that the respondents' bills do not make out a case for injunctive relief against an unconstitutional statute. If the petitioners really believe this to be the case and if they are right, a simple motion to dismiss would of course at once remove the multiplicity of suits which is the ostensible reason for their motion for a stay. Obviously, however, the question of the sufficiency of the bills in this respect cannot be raised on this motion for a stay; and just as obviously this alleged insufficiency of the bills affords no justification for the stay.*

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*In the court below petitioners made the following express admission:

> "The Respondents aver that whether the Petitioner's bill is ultimately determined to be with or without equity is irrelevant to the granting or denying of the stay. The Respondents did not move to dismiss Petitioner's bill" (R., p. 260).

VII.

THE AUTHORITIES.

The Authorities Showing That the Stay in Question Constitutes a Gross Abuse of Discretion.

The cases showing that the stay obtained by the petitioners constitutes a gross abuse of the trial court's discretion are overwhelming. In every one of the following cases the sought-for stay, which was refused, was less drastic and far-reaching than the petitioners' stay. In no one of these cases was the sought-for stay a stay

(a) *in limine*

(b) *until the final determination of*

(c) a simultaneously (or virtually simultaneously) commenced suit

(d) where the issues in the two suits were *not identical but merely similar, and*

(e) where the stayed party was not a party to the preferred suit.

We have found no case where a party has heretofore even thought of asking for a stay of the above sort. We call the Court's attention to the following cases defining and limiting the proper functions of a stay.

Mercantile Trust Co. v. *Lamoille Va. R. Co.*, Fed. Cas. No. 9432 (C. C. Vt. 1879);

Wadleigh v. *Veazie*, Fed. Cas. No. 17,031 (C. C. Me. 1838) (Opinion by Justice Story);

Loring v. *Marsh*, Fed. Cas. No. 8514 (C. C. Mass. 1864);

Checker Cab Mfg. Co. v. *Checker Taxi Co.*, 26 F. (2d) 752 (N. D. Ill. 1928);

National Motor Bearing Co., Inc. v. *Consolidated Motor Parts Co.*, 6 Fed. Supp. 811, 812 (E. D. N. Y. 1934);

Jefferson Standard Life Ins. Co. v. *Keeton*, 292 Fed. 53 (C. C. A. 4th 1923);

Toplitz v. *Miller*, 32 Fed. 744 (S. D. N. Y. 1887);

Johnson v. *N. Y. O. & W. Ry. Co.*, 3 Fed. Supp. 80 (E. D. N. Y. 1931);

Kirkpatrick v. *Eastern Milling & Export Co.*, 135 Fed. 144 (D. N. J. 1904);

City of Detroit v. *Detroit City Ry. Co.*, 55 Fed. 569 (E. D. Mich. 1893);

Electric Vehicle Co. v. *Barney*, 143 Fed. 551 (S. D. N. Y. 1906);

Dolbeer v. *Stout*, 139 N. Y. 486 (1893);

Clark v. *Vilas National Bank*, 22 A. D. 605 (N. Y. 1897);

Rosenberg v. *Slotchin*, 181 A. D. 137, 138 (N. Y. 1917);

Ogden v. *Pioneer Iron Works*, 91 A. D. 394 (N. Y. 1904);

Swift v. *Finnigan*, 53 A. D. 76 (N. Y. 1900);

Jenkins v. *Baker*, 91 A. D. 400 (N. Y. 1904);

Bicalky Fan Co. v. *Mosier & Summers, Inc.*, 177 A. D. 372 (N. Y. 1917);

Dunfee v. *Childs*, 53 S. E. 209, 59 W. Va. 225 (1906);

Dalgarn v. *New Orleans Land Co.*, 109 So. 345, 161 La. 653 (1926);

Bergholm v. *Peoria Life Ins. Co.*, 63 S. W. (2d) 1064 (Texas 1933);
Dumphy v. *Belden*, 57 Cal. 427;
Cates v. *Mayes*, 12 S. W. 51 (Supreme Ct. Texas 1889);
Farmers' Co-op. Gin Co. v. *Harper*, 268 Pac. 256, 131 Okla. 224 (1928);
Wood v. *Lake*, 13 Wisc. 84 (1860);
Granger v. *Judge of Wayne Circuit*, 27 Mich. 406 (1873);
Boynton v. *Brown & Mathes*, 145 S. W. 242, 103 Ark. 513 (1912).

A *statute* providing for an unreasonably indefinite stay of actions on contracts has been held to be unconstitutional as impairing the obligations of the contracts. *Sliossburg* v. *New York Life Insurance Co.*, 244 N. Y. 482 (1927).

The Cases Cited by Petitioners.

Kansas City Southern Railway v. *United States*, 282 U. S. 760. This case is merely an illustration of the settled rule that a plaintiff's suit may be stayed for proper reasons (usually in order to avoid an unseemly conflict of jurisdictions), *where he has a complete and prompt remedy in another pending suit, in which he is already a party or in which he has the right to become a party.* In that case a number of railway companies had been parties to a single proceeding in which an order had been entered by the Interstate Commerce Commission. Two groups of companies attacked the order, one by a suit in Kentucky and the other by a later suit in Missouri. The Commission and the Government made no reference in their answer in the Missouri

suit to the prior suit in Kentucky. The Kentucky suit resulted in a decree sustaining the order of the Commission. The Commission and the Government thereupon filed an amended answer in the Missouri suit, and on the day of final hearing, setting up the decree in the Kentucky suit as an affirmative defense and claiming that, under the Act redistributing the jurisdiction of the Commerce Court, the jurisdiction of one district court could not be invoked to enjoin an order of the Commission after the order had been sustained by another district court. This Court overruled that affirmative defense, but sustained the Commission's order on its merits. In overruling the affirmative defense, this Court held that the court in Missouri committed no error in proceeding with the cause, notwithstanding the prior decision of the court in Kentucky, the opinion, however, stating that the court in Missouri might, in its sound discretion, have stayed the case before it pending the decision in the Kentucky case. The Court's reason for this statement was as follows (p. 763, italics ours):

> "The appellants," (the railway companies) "upon proper application *could have been allowed to intervene in the earlier suit * * * and could have presented there all of their grounds of attack upon the orders in question.*"

As the present respondents have no such remedy, the complete inapplicability of this case to the instant case is too plain for comment. The admitted object of the stay sought by the petitioners is to *prevent* the respondents from procuring an adjudication of their rights in *any* suit until after petitioners have prosecuted their own suit against Electric Bond and Share Company to a decision in this Court.

The remaining cases cited by the petitioners are equally inapplicable.

Friedman v. *Harrington,* 56 Fed. 860 (C. C. D. Mass., 1893). The bill was to enjoin the enforcement of a Massachusetts statute, alleged to be unconstitutional. *The question arose on a demurrer to the bill.* The court declined to pass on the demurrer, and continued the case *merely until the next term of the court.* His reasons for this short continuance were (a) that the question of the constitutionality of the statute *was already before the Supreme Court in two other cases which were likely to be "speedily reached", and that the property rights of the defendant were not endangered by this slight delay.*

Enelow v. *New York Life Insurance Co.,* 293 U. S. 379. Apparently this case was cited simply because of a single sentence in the opinion with reference to the general powers of courts to grant stays "to maintain the orderly processes of justice." As the facts show,* the Chief Justice was merely pointing out in this statement the plain distinction between the ancient equitable jurisdiction of courts of equity to enjoin actions at law, and the power of *all* courts—"a court of law as well as a court of equity"—to grant reasonable delays, continuances or other "stays" in any case, in order "to control the progress of the cause so as to maintain the orderly processes of justice".

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*The action was an action at law by the death beneficiary of an insurance policy to recover, after the death of the insured, the amount of the policy. The defendant pleaded affirmatively fraud in the procurement of the policy, and then moved, under Section 274(b) of the Judicial Code (28 U. S. C. 398) for an order staying the trial of the action at law until the issues raised by the defense of fraud had been tried in equity, *i.e.*, without a jury. The holding of this Court was that the defense was a good defense at law, and that therefore Section 274(b) of the Judicial Code did not apply, and that the defendant was not entitled to the "stay" which had been granted to it, and which, as the court said, was the statutory equivalent of an injunction in equity against the prosecution of an action at law.

No one disputes that the courts do not need the statutory authorization of Practice Acts in order to grant reasonable adjournments and other postponements of pending litigation. And of course the only difference between the ordinary extension of time, continuance, adjournment, or other postponement in a judicial proceeding, and what is ordinarily called a "stay of proceedings", is that the former are usually adjournments of *specific* steps or processes in the suit, while the word "stay" is usually applied to the form of adjournment which, during its continuance, applies to all further proceedings therein. But a "stay" in this latter sense is not necessarily, or usually, *a stay in limine for an indefinite time in the future.*

Pennsylvania v. *Williams*, 294 U. S. 176; *Gordon* v. *Ominsky*, 294 U. S. 186; *Penn General Casualty Co.* v. *Pennsylvania*, 294 U. S. 189. These are all cases of the relinquishment, *solely on the basis of comity*, of jurisdiction by *federal* courts in favor of *state* courts and other tribunals where the latter already had complete jurisdiction (*in rem* or *quasi in rem*) of the subject matter of the litigation, and full power to grant prompt relief *to all parties to it*—cases, that is, where this Court held that the federal courts should not interfere with the state courts which were proceeding properly in the administration of the affairs of their own insolvent domestic corporations.

They involved a mere choice between conflicting but equally competent and available jurisdictions, in either of which the plaintiff could proceed to a prompt and full remedy, so that he would suffer no loss through unnecessary delay. The "stays" at bar, on the other hand, involve a denial to the plaintiffs of a prompt and full adjudication of their cases in *any* jurisdiction (since petitioners cannot

be sued outside the District of Columbia), in face of the certainty that they will suffer great and irreparable losses during the long and enforced delay.

The principle of these cases has again been affirmed in *Commonwealth Trust Company* v. *Bradford,* 297 U. S. 613 (1936). In that case the Court, in holding that jurisdiction should not have been relinquished on the ground of comity, said (italics ours):

> *"Jurisdiction having been properly invoked, it became the duty of the trial court to determine the issues, unless required by rules based on comity to relegate the complainant to the State Court.*
>
> * * *
>
> "The trial court properly exercised the jurisdiction which it acquired. The doctrine approved in *Pennsylvania* v. *Williams,* 294 U. S. 176, 79 L. Ed. 841, 55 S. Ct. 380, 96 A. L. R. 1166, and *Penn General Casualty Co.* v. *Pennsylvania,* 294 U. S. 189, 79 L. Ed. 850, 55 S. Ct. 386, *supra,* is not applicable. In each of those cases we found conflict between the Federal Court and authorities of the State concerning liquidation of the business and assets of an insolvent local corporation."

Equally inapplicable is the case of *Di Giovanni* v. *Camden Fire Insurance Association,* 296 U. S. 64, cited by petitioners (petition, p. 26) for the proposition that the maintenance of a bill in equity to enjoin a multiplicity of suits does not depend upon exact identity of parties or issues. The court there was speaking of a situation where one party seeks to unite in a suit in equity numerous suits instituted against him at law. Such a suit, in effect, enjoins prosecution of the law suits by offering the plaintiffs in those suits *another forum* where all claims may be litigated

promptly in a single case. Obviously, in such a situation absolute identity of issues and parties is not essential, but only such identity as will permit the single court promptly to determine the rights of all of the litigants.

The rules of law which have heretofore been established with respect to stays are clear and unequivocal and they are the same in all courts, state and federal. There is no conflict between the decisions of other courts and they are in no way inconsistent with, but clearly conform to, the decisions of this Court bearing on such questions.

The majority opinions of the Court of Appeals have correctly applied these settled general principles. There is, therefore, no occasion for this Court, as requested by petitioners, to "define for the guidance of the federal courts the appropriate limits of a trial court's power and discretion in granting a stay."

Respectfully submitted,

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September, 1936.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 221

JAMES M. LANDIS, *et al.*,

Petitioners,

vs.

THE NORTH AMERICAN COMPANY,

Respondent.

No. 222

JAMES M. LANDIS, *et al.*,

Petitioners,

vs.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED,

Respondent.

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INDEX

	PAGE
The Appeals	1
Dates	2
The Stays	2
Character of the Stay	3
The Plaintiffs' Suits	5
Outline of the Facts	5
The Offer of Counsel for the Plaintiffs	9
Certain Other Matters Which the Defendants Have Urged to Justify the Stay	10
The Alleged Distinction Between Want of Power to Grant, and Abuse of Power in Granting, the Stay.	11
The Question in the Case	12
Summary of the Argument	13

ARGUMENT:

I. For Practical Purposes the Stay Amounts to a Renunciation of Jurisdiction by the Trial Court	17
II. The Question on Principle and on the Authorities	21
Introduction	21
The Element of Damages Caused by the Stay Itself	22

PAGE

The Attempt to Justify the Stay as Relief Analogous to That Afforded on a Bill to Enjoin a Mutiplicity of Suits:

1. The Law 23

2. The Facts 25

3. The Offer to Select Test Cases..... 27

The Cases Relied On by the Defendants..... 30

III. The Bill of Each Plaintiff Shows Clearly That It is Now Suffering Irreparable Damages Which Will Continue to Increase Until It Obtains the *Final* Relief Prayed For 36

IV. The Commission's Offer to Permit Holding Companies to Register Under the Act "Without Prejudice" 42

V. Plaintiffs' Right to Relief in Equity..... 45

VI. The Offer of a Temporary Injunction..... 46

VII. The Defendants' Argument Based on Their Threat to Default If the Stay Is Not Granted. *Pennsylvania* v. *Wheeling Bridge Co*..... 48

VIII. The *Bond and Share* Case..... 51

Conclusion 76

Appendix A—The Authorities Show Unanimously That the Stay Constitutes a Grave Abuse of Discretion i

Appendix B—Plaintiffs' Right to Relief in Equity... xxi

Appendix C—The *Wheeling Bridge* Case and the Other Cases Cited by the Defendants in the Same Connection xxxii

CASES CITED

PAGE

American Express Co. v. *Mullins*, 212 U. S. 311 xxxvi

Bergholm v. *Peoria Life Ins. Co.*, 63 S. W. (2d) 1064 (Texas 1933) ix

Bisalky Fan Co. v. *Mosier & Summers, Inc.*, 177 A. D. 372 (1917) xix

Boynton v. *Brown & Mathes*, 145 S. W. 242, 103 Ark. 513 (1912) xiii

Burco, Inc. v. *Whitworth, et al.*, 81 F. (2d) 721 (C. C. A. 4th, 1936) Cert. denied 297 U. S. 724 62

Burke v. *Betts*, 126 Misc. 601 (N. Y. Co. 1927) xvii

Carter v. *Carter Coal Company*, 298 U. S. 238 xxxi

Cates v. *Mayes*, 12 S. W. 51 (Sup. Ct. Texas 1889) . . xii

Checker Cab Mfg. Co. v. *Checker Taxi Co.*, 26 F. (2d) 752 (D. C. N. D. Ill. 1928) v

City of Detroit v. *Detroit City Ry. Co.*, 55 Fed. 569 (C. C. E. D. Mich. 1893) xiii

Clark v. *Vilas National Bank*, 22 A. D. 605 (1897) . . xv

Cohens v. *Virginia*, 6 Wheat. 264, 404 18

Commonwealth Trust Company v. *Bradford*, 297 U. S. 613 (1936) 34

Dalgarn v. *New Orleans Land Co.*, 109 So. 345, 161 La. 653 (1926) viii

Darger v. *Hill* (C. C. A. 9th, 1935) 76 F. (2d) 198. xxxi

Detroit Creamery Co. v. *Kinnane*, 264 F. 845 (1920). xxxi

Di Giovanni v. *Camden Fire Insurance Association*, 296 U. S. 64 25

Dolbeer v. *Stout*, 139 N. W. 486 (1893) xiv

Dunfee v. *Childs*, 53 S. E. 209, 59 W. Va. 225 (1906). vii

Dunphy v. *Belden*, 57 Cal. 427 xii

Electric Vehicle Co. v. *Barney*, 143 Fed. 551 (C. C. S. D. N. Y. 1906) xiii

Enelow v. *New York Life Insurance Co.*, 293 U. S. 379 32

Euclid v. *Ambler Co.*, 272 U. S. 365 xxvii

PAGE

Farmers' Co-op. Gin Co. v. *Harper*, 268 Pac. 256, 131 Okla. 224 (1928) xii

Friedman v. *Harrington*, 56 Fed. 860 (C. C. D. Mass. 1893) 32

Gordon v. *Ominsky*, 294 U. S. 186 33

Gunter v. *Atlantic Coast Line Railroad Company*, 200 U. S. 273 (1906) xxxvii

Granger v. *Judge of Wayne Circuit*, 27 Mich. 406 (1873) xii

Hatch v. *Wallamet Iron Bridge Co.*, 27 Fed. 673 (1886) ..... xxxiii, xxxiv

Henry v. *Dick Company*, 224 U. S. 1 (1912) 18

Jenkins v. *Baker*, 91 A. D. 400 (1904) xviii

Jefferson Standard Life Ins. Co. v. *Keeton*, 292 Fed. 53 (C. C. A. 4th 1923) ix

Johnson v. *N. Y., O. & W. Ry. Co.*, 3 Fed. Supp. 80 (D. C. E. D. N. Y. 1931) xii

Kansas City Southern Railway Company v. *United States*, 282 U. S. 760 ..... 30, 31

Kirkpatrick v. *Eastern Milling & Export Co.*, 135 Fed. 144 (C. C. D. N. J. 1904) xiii

Loring v. *Marsh*, Fed. Cas. No. 8514 (C. C. Mass. 1864) iv

Mercantile Trust Co. v. *Lamoille Val. R. Co.*, Fed. Cas. No. 9432 (C. C. Vt. 1879) i

Mills v. *Green*, 159 U. S. 651 (1895) xxxiii

National Motor Bearing Co., Inc. v. *Consolidated Motor Parts Co.*, 6 Fed. Supp. 811, 812 (E. D. N. Y. 1934) vi

New Orleans v. *Citizens Bank*, 167 U. S. 371, 388 xxxvii

Ogden v. *Pioneer Iron Works*, 91 A. D. 394 (1904) xviii

Penn General Casualty Co. v. *Pennsylvania*, 294, U. S. 189 33

Pennsylvania v. *West Virginia*, 262 U. S. 553 (1923) xxix

Pennsylvania v. *Wheeling Bridge Company*, 59 U. S. 421 (1885) ..... 48, 51, xxxiii, xxxiv, xxxv

PAGE

Pennsylvania v. *Williams*, 294 U. S. 176..... 33
Pierce v. *Society of Sisters*, 296 Fed. 928 (1924), 268 U. S. 510 (1925).....xxi, xxiv
Portland Ry. Light & Power Co. v. *Portland*, 201 F. 119 (1912) xxxi
Rooker v. *Fidelity Trust Company*, 263 U. S. 413, 415 xxxvi
Rosenberg v. *Slotchin*, 181 A. D. 137, 138 (1917)... xvii
Sliosberg v. *New York Life Insurance Company*, 244 N. Y. 482 (1927)..... 19
Southern Pacific Railroad Company v. *United States*, 168 U. S. 1, 48.....xxxv
Squier v. *Houghton*, 131 Misc. 129..... xiv
Swift v. *Finnigan*, 53 A. D. 76 (1900)..... xviii
Terrace v. *Thompson*, 263 U. S. 197..... xxv
Toplitz v. *Miller*, 32 Fed. 744 (S. D. N. Y. 1887).... xii
United States v. *Swift & Company*, 286 U. S. 106..xxxvii
Vicksburg Waterworks Co. v. *Vicksburg*, 185 U. S. 65 xxviii
Wadleigh v. *Veazie*, Fed. Cas. No. 17,031 (C. C. Me. 1838) .....i, ii, x
Wood v. *Lake*, 13 Wisc. 84 (1860)..... xii

STATUTES CITED

Federal Declaratory Judgments Act of June 14, 1934, 48 Stat. 955 5
Judicial Code, 28 U. S. C. 398, Section 274(b)..... 32
New York Civil Practice Act, Section 167..... xiv
New York Rules of Civil Practices, Rules 106 and 107 xiv
Public Utility Holding Company Act of 1935, 49 Stat. 803 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 221

JAMES M. LANDIS, *et al.*,
Petitioners,

vs.

THE NORTH AMERICAN COMPANY,
Respondent.

No. 222

JAMES M. LANDIS, *et al.*,
Petitioners,

vs.

AMERICAN WATER WORKS AND ELECTRIC COMPANY, INCORPORATED,
Respondent.

BRIEF FOR THE RESPONDENTS

THE APPEALS

The petitioners (hereafter called the defendants) have obtained, by writs of certiorari, a review by this Court of two identical decrees of the United States Court of Appeals for the District of Columbia, entered June 22,

1936 (R. 215),* reversing two identical interlocutory orders of the Supreme Court (now the District Court) of the District of Columbia which granted identical motions made by the defendants to stay suits in equity commenced against them in that Court, one by each of the respondents (hereafter called the plaintiffs).

DATES

The plaintiffs' bills were filed on November 26 and 27, 1935 respectively, the bill of The North American Company being the first filed. The defendants' motions for the stays were filed on December 7, 1935 (R. 24). The stays were granted on January 6, 1936. The plaintiffs obtained leave to appeal to the Court of Appeals, and the order of the Court of Appeals reversing the order of the Court below was entered on June 22, 1936 (R. 215-227). The defendants' petitions for certiorari were filed on July 24, 1936, and were granted by this Court on October 12, 1936 (R. 230).

THE STAYS

The stays were stays of all proceedings in the plaintiffs' suits "until the validity" of the Public Utility Holding Company Act of 1935** "has been determined by the Supreme Court of the United States in the case of the *Securities and Exchange Commission* vs. *Electric Bond and Share Company, et al.* [hereafter called the *Bond and Share* case], now pending in the District Court of the

*All page references are, unless otherwise noted, to the printed Record in the *North American Company* case.

**49 Stat. 803.

United States for the Southern District of New York or until that case is otherwise terminated" (R. 25).

The only condition of the stays was that the *Bond and Share* suit should be diligently prosecuted by the plaintiff therein, the Securities and Exchange Commission (R. 35).

The stays were granted before the defendants had answered or otherwise moved.

CHARACTER OF THE STAY*

The stay was a stay *in limine* to enable the party obtaining it to prosecute *to final judgment in another court against another litigant of his own selection another law suit* commenced simultaneously** with the stayed suit, to which preferred suit the stayed plaintiff in the other suit was not made or invited to become a party, *and in which he had no right to intervene.* The only reasons assigned for it were that the stayed suit was one of a large number of other suits commenced or about to be commenced against the defendant in the stayed suit, and that the issues in all of the suits were such that the final judgment in the preferred suit *might* determine the issues in the stayed suit, *** and that the great number of the other suits would "tend to clog the courts, overtax the facilities of the government and make against that orderly and economical disposition of the controversy which is the government's aim" (R. 24-25).

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*As the stays in both suits are identical we will usually refer to them hereafter in the singular.

**The North American bill was filed on the same day as the bill in the *Bond and Share* suit, the Water Works bill the next day.

***The defendants' own language is that the *Bond and Share* decision will "tend to simplify" or "substantially narrow" the issues in the plaintiffs' cases. This alleged reason was not stated in the defendants' motion and only appeared in their briefs and oral argument.

In practical effect, therefore, the stay created, as Judge Groner pointed out in his opinion in the Court of Appeals (R. 220), precisely the same situation that would be created if a litigant, threatened with a multiplicity of suits against him involving similar but concededly not identical issues, instead of bringing a bill in equity against his adversaries to combine their cases in one suit, took the initiative by himself selecting only *one* of them as a defendant, and then, by separate, independent bills against the others enjoined them from *commencing* their actions against him until the controversy between him and his single selected adversary had been finally decided by the court of last appeal. The defendants have never attempted to show that in the ordinary calendar course the *Bond and Share* case would probably be tried before the plaintiff's cases. The motion for the stay alleges that it is the aim of the Government to obtain an "orderly and economical disposition of the controversy". This is the only allegation in the motion which could be taken to refer to such things as calendar congestions and other matters primarily of concern only to the courts and to other litigants. But with respect to such matters, the defendants have neither made nor attempted to make any showing whatever.*

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*Of course, there is not a word in the opinion of the learned trial judge to suggest that the condition of the calendars of his own court had anything whatever to do with the granting of the defendants' motions, or that the motion was granted *for any other purpose than to afford relief to the defendants*. Obviously, if the relief of his own calendars had been in his mind, he would have made some statement as to how the trial of *even one* of the stayed cases would clog these calendars, and obviously also the stay would have been conditioned on the continuance of calendar congestion due to other cases. Somewhat amusing, therefore, is the statement in the defendants' brief (p. 67) that the plaintiffs did not "completely" rest their case on the "technical ground that the court was without any power to relieve the calendar from the trial of a multitude of essentially similar suits"—to say nothing of the absurdity of imputing to us any such argument.

THE PLAINTIFFS' SUITS

The plaintiffs' suits are bills in equity to enjoin the defendants (the members of the Securities and Exchange Commission—the plaintiff in the *Bond and Share* suit,—the Attorney General, and the Postmaster General) from enforcing the Public Utility Holding Company Act of 1935 (hereafter called "the Act") against the plaintiffs on the ground that the Act is, as against them, unconstitutional *in toto** (R. 1-24).

OUTLINE OF THE FACTS

As above stated, the motion for the stay was made on December 7, 1935.

Both plaintiffs are holding companies of the class required by the Act to register under it on or before December 1, 1935. Both bills were filed shortly before that date. Each bill alleges that the plaintiff has not registered and declares the plaintiff's intention not to register. (Neither plaintiff has subsequently registered.) Each bill invokes the equitable jurisdiction of the court because of the irreparable damages which it shows that the Act is daily causing the plaintiff, which damages, as each bill also shows, will continue and accumulate until the plaintiff obtains the *final* injunctive relief prayed.** Neither bill

*The North American Company's bill also asks a declaration of the unconstitutionality of the Act under the Federal Declaratory Judgments Act of June 14, 1934 (48 Stat. 955). It seems clear, however, that none of the defendants' alleged justifications of the stay requires consideration of this aspect of the bill.

**Discussion of the sufficiency and relevancy of these allegations as to damages will be found under the appropriate subdivisions of this brief (see *infra*, pp. 36-42).

asks for a temporary injunction and neither plaintiff has since sought one, because, as hereinafter demonstrated (pp. 47-48), a temporary injunction would neither prevent nor ameliorate the damages which the plaintiffs are daily suffering from the Act.

The bill of the defendant Commission in the *Bond and Share* case in the District Court in New York prayed for a writ of mandamus to compel the defendants (Electric Bond and Share Company and five of its corporate subsidiaries) to register under the Act (R. 78). It also sought to enjoin them from engaging in any of the activities forbidden to unregistered holding companies (R. 78).*

Within a few days after the filing of the plaintiffs' bills five other holding companies filed their bills in the same court (R. 80). These bills sought substantially the same relief as those of the plaintiffs. Similar motions for stays were made and granted in all of these suits.

When the motion for the stay was made there were also pending in other United States district courts approximately forty other suits, all or most of them seeking substantially the same relief (R. 79-81). The bills in these district court suits, or most of them, named as defendants the defendants herein, or some of them, as well as the local federal district attorneys and other local federal officials (R. 39).

The Washington defendants in these district court cases (the defendants here) declined, however, to appear in any of the suits, and, under special appearances, by the appropri-

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*The purpose of the Government's bill in the *Bond and Share* case is incorrectly stated in the defendants' brief (p. 7) as being to compel the defendants thereto to register *or* to refrain from violating Section 4(a) of the Act. The prayer is (R. 78) to compel them to register *and* to enjoin violations of Section 4(a).

ate motions they have obtained, or will obtain,* the dismissal of these other suits as against themselves (R. 187-188). These motions were all made after the motion for the stay in these suits. As a consequence, the only argument in support of the stays which, as we understand it, the defendants now make based on these suits in the other federal courts is that they may be recommenced in the District of Columbia. None of them, however, has as yet been recommenced. In addition, one of the five other suits against them in the District of Columbia has been withdrawn as that company has ceased to be a holding company. The plaintiffs in the remaining four suits are corporations in one holding-company system. During the oral argument before the trial court counsel for these companies stated that if these plaintiffs' suits were tried, the companies which he represented were willing to hold their suits in abeyance. At present, therefore, the "multiplicity" of pending and really *im*pending suits against the defendants to test the constitutionality of the Act *has dwindled to the plaintiffs' two suits.*

The motion was made by the Attorney General and by the general counsel for the Commission. It was unverified and unsupported by affidavits (R. 24-25). No fact was stated in it in substantiation of the above quoted general statement about "overtaxing the facilities of the government",** and no testimony or affidavit was later offered to

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*Some of the motions are being held in abeyance, but it is undisputed that the defendants are entitled to have these motions granted whenever they desire to press them.

**Equity Rule 51 of the Supreme Court of the District of Columbia requires applications for continuances beyond the term to be supported by affidavit. Law Rule 45 requires all applications for continuances to be so supported. The rules do not specifically refer to "stays".

support it, although the defendants later made extensive additions to the record in other respects.*

In this connection we think it is permissible (since the defendants' brief refers at length to recent developments in the *Bond and Share* case) to state the following additional facts—all matters of record in the *Bond and Share* case:

On June 30, 1936 a stipulation was filed in the *Bond and Share* case covering *all* the facts in the case on which it was to be tried in the district court.** This was eight days after the Court of Appeals had reversed the stays in these cases. The main briefs of all parties in the *Bond and Share* case were filed on or about September 15, the reply briefs of all parties on or about October 10. The case was first set for oral argument before the district judge on October 5 and is now set for November 11. Therefore, the only remaining "tax on the facilities of the government" in the *Bond and Share* case is the oral argument in the

---

*On February 19, 1936, the defendants filed a motion with accompanying affidavits and exhibits, among others, a copy of the amended and supplemental bill in the *Bond and Share* case and the answer thereto. This was done in order to make a formal record on the appeal to the Court of Appeals of certain statements made on the oral argument for the stay (R. 36-184). Pages 46 to 184 of this supplemental record relate entirely to the *Bond and Share* case.

On February 26, 1936, the plaintiffs answered this motion, but agreed to waive irregularities, and stipulated that the affidavit and exhibits might be considered a part of the record on the appeal (R. 184-188).

**This means merely that there will be no evidence offered on the hearings in the trial court, and not that the parties *have agreed* as to all the facts; for the stipulation shows that there are certain questions of fact as to which the parties are in disagreement, in addition to being also in disagreement as to the relevancy and materiality of other facts. Such matters are covered by the stipulation of each party as to how witnesses for the adversary party would testify if such testimony should be held relevant and material.

district court and on any subsequent appeals and the preparations of the briefs on such appeals.

Each of the plaintiffs filed a sworn answer to the motion for the stay (R. 25-31), alleging that the issues of both law and fact in the *Bond and Share* case are entirely dissimilar to the issues in its case, and also showing just how it would be irreparably damaged by the stay.

THE OFFER OF COUNSEL FOR THE PLAINTIFFS

During the oral argument of the motion counsel for the plaintiffs reviewed the offers which had previously been made to Government counsel by him and by the utility industry to arrange for the trial of three or four test cases in a single consolidated suit and to hold all other cases in abeyance pending the final decision of the test cases. After stating that the Government attorneys had ignored these offers, counsel renewed the offer in open court. This proposal, and the Attorney General's refusal to consider it, read as follows (R. 197):

> "Mr. Higgins: If counsel for the Government really want in these cases to avoid a multiplicity of trials and suits and proceedings and if they will meet any of our overtures half way, I undertake to say that it will not be difficult for us to agree upon a group of three or four cases which will present every question that is involved in this multitude of suits, so that every one of these companies may be satisfied that its rights will be promptly determined—*consolidate them all in one case, in one court, and try them out*—so that the Government need not multiply its staff and need not exhaust its budget; and if it can go ahead, *if it wants to go ahead, to a*

fair determination of those issues in one case, in one court, we will know then, in a year's time, perhaps, just what the fate of all these companies is to be.

* * *

"The Court: I will take the case under consideration. In the meantime if the parties can reach any agreement as to the hearing of these cases, any agreement such as suggested by Mr. Higgins, of course, I shall be glad if you do so. Otherwise, of course, I will proceed to act on this application.

"The Attorney General: I think such negotiations will be entirely futile, your Honor.

"Mr. Higgins: I will say, in spite of the Attorney General's statement, we are entirely willing to undertake such negotiations. We do not propose to force ourselves on him, however."

This offer was made on behalf of the industry as a whole; it has always remained open, and is still available to the defendants.

CERTAIN OTHER MATTERS WHICH THE DEFENDANTS HAVE URGED TO JUSTIFY THE STAY

Before the commencement of the plaintiffs' suits the defendant Commission had offered to accept notices of registration under the Act containing reservations to the effect that registration should be without prejudice to the right of the registrant thereafter to challenge the constitutionality of the Act (see R. 41-42). Before the plaintiffs' suits were commenced the defendants had also announced that they did not intend *for the time being* to prosecute holding companies required to register for failing to register or for

thereafter doing any of the acts prohibited to unregistered companies (see R. 42-45). The arguments based on these announcements are hereafter discussed (see *infra,* pp. 42, 45).

Both on the argument in the trial court and in their reply brief in that court the defendants definitely threatened that they would suffer a default in the plaintiffs' cases if their stay should not be granted (R. 34). The argument in support of the stay based on the possibility that the defendants may thus default is hereafter discussed (see *infra,* pp. 48-51).

In the trial court the defendants offered to submit, during the period of the stay, to a *temporary* injunction. The argument that this offer justifies the stay is also elsewhere discussed (see *infra,* p. 46).

THE ALLEGED DISTINCTION BETWEEN WANT OF POWER TO GRANT, AND ABUSE OF POWER IN GRANTING, THE STAY

We wish to state at the outset that we do not dispute the inherent power of all courts, although lacking *ad hoc* constitutional or statutory authority, to grant "stays" of proceedings before them, in addition to the less comprehensive delays which are usually designated by other words and many of which are frequently limited and otherwise controlled by practice acts or court-rules. In one sense, therefore, it is true that no question of judicial "power" is here involved.

But, since there must in the nature of things be some frontiers to this "power" to grant stays, and since it seems clear that (in the absence of less elastic statutory

metes and bounds) these boundaries must necessarily be coterminous with those of a sound judicial discretion, it follows that when the limits of sound discretion have been passed, it is all one whether we say that the court has acted without power or has abused its power. The Court will therefore find that in many of the cases cited in this brief the courts in condemning improvident stays use the language of want of power. That such language in such cases means, however, no more than that judicial discretion was abused is clear from the fact that in none of these cases is there any thought of questioning the general "power" of courts to grant stays, and by the further fact that in none of them does the decision turn on any circumscription of these powers, statutory or otherwise, determined by other limits than those of a sound judicial discretion.*

We therefore pass without further comment defendants' arguments based on the theory that in such a case as this there is some important distinction between a trial court's "power" in the premises and its abuse of that power.

THE QUESTION IN THE CASE

In the light of the foregoing, and now that this Court, having granted the defendants' petition for *certiorari,* is hearing these cases on the merits, we submit that it is quite immaterial whether the opinions of the majority judges of the Court of Appeals can be read as having made the precise "holdings" on abstract propositions of law stated in specifications 2 and 3 of the defendants' "Specification of Errors" (br., p. 19). We believe that the Court of Appeals in fact made no such holdings, and also that it did not hold

*The authorities also show that the power to grant stays is not in the least "equitable", in the sense of being in any way broader in equity cases than in actions at law, as the defendants' brief in many places insinuates (see defendants' brief, pp. 25, 37, 40).

that "the discretionary power of the trial court did not extend to the granting of *a* stay pending the final outcome of another suit if the suits stayed did not involve the same parties and the same issues and if the stayed suits had not yet technically* come to issue" (dfts.' brief, p. 18). We submit that the holding of the Court of Appeals was simply a holding that *on the facts shown by the record before it, this particular stay* constituted an abuse of whatever discretion the trial court may have had in the matter of granting "stays", as distinguished from the more ordinary forms of delays. But however that may be, we submit that this and this alone is the question now before this Court. It is therefore wholly immaterial whether a stay is improper (a) merely because it is granted before answer, or (b) merely because the issues in the stayed suit are not identical with the issues in the preferred suit, or (c) merely because the stayed party is not a party to the preferred suit, or even whether or not (d) a stay *of some sort* may be granted even if all these three factors—lack of identity of issues and of parties, and failure of joinder of issues—are combined.

SUMMARY OF THE ARGUMENT

We present here a short summary of the argument in this brief:

A. The defendants did not and do not *need* the stay:

1. Because they were not when it was granted and they are not now threatened with any real multiplicity of suits. This is shown by the facts al-

*"Not yet technically come to issue" is hardly an adequate or accurate description of a case where no motion, plea, or answer whatever has been filed. The defendants' euphemism here is much like their characterization of this stay as "merely temporary".

ready stated with reference to the suits in the other District Courts and the offer of plaintiffs' counsel to select test cases. These matters are further discussed on pages 25 to 30 of this brief.

2. Because they have completely failed to show that a stay of the character granted them was necessary to give them all the time that they might reasonably need to answer the plaintiffs' bills and after answering prepare for the trial of the cases.

B. A multiplicity of suits, even if it existed, could not possibly justify a stay of this character. This is shown on pages 23 *et seq.*

C. The plaintiffs are being irreparably injured *by the stay itself*. The nature and extent of the injuries which the plaintiffs are suffering are shown in Section

Sections II, IV, VI and VII, pages 21, 42, 46 and 48,

V, pages 45 to 46, and Appendix B answer the argument that the plaintiffs' bills do not show a right to relief against the Act in equity.)

D. The facts in the *Bond and Share* case, both as they existed when the stay was granted and *as they now exist*, show that there is no such "similarity" between the issues in that case and the issues in the plaintiffs' cases to justify the stay, even if similarity of issues might otherwise be held to justify such a stay (Section VIII, pages 51 to 75). Not only is there no such "similarity" of issues, but in truth there is complete

dissimilarity of issues on vital and controlling facts. The defendants by their arguments and allegations in the *Bond and Share* case have virtually conceded that the Act cannot be upheld unless the business of holding companies constitutes interstate commerce. By far the largest portions of their bill and their briefs in the *Bond and Share* case consist of allegations and arguments seeking to show that because of domination over subsidiary companies and because of "vast" and "extensive" and "interstate" services the Bond and Share system constitutes an "interstate empire". The record in the *Bond and Share* case shows that the Government rests its case almost wholly on these alleged facts. The plaintiffs' bills show that such facts do not exist in the plaintiffs' cases. This difference between *Bond and Share* and the plaintiff companies as to these fundamental and controlling facts completely differentiates the *Bond and Share* case from the cases at bar. If there should be a final decision holding the Act constitutional as to *Bond and Share* on the above facts, these plaintiffs would still be left with nothing determined as to their own status and with further years of litigation and losses ahead of them before their rights could be finally adjudicated.

E. The record in the *Bond and Share* case shows that the defendants themselves contemplate that the *Bond and Share* case may be decided by this Court or otherwise disposed of on grounds which will leave the issues in the plaintiffs' cases wholly untouched. The defendants, despite their statements in the cases at bar as to the broad scope of the *Bond and Share* case, are seeking by every means within their power *to limit the scope*

of that case to the single question of the constitutionality of one provision of the Act—the provision requiring public utility holding companies to register with the Commission. They have made technical motions and have advanced procedural and jurisdictional arguments to this end. These matters, as well as those referred to in point D above, are fully shown in Section VIII, pages 51 to 75, dealing with the *Bond and Share* case. They are, for the most part demonstrated by the arguments of the Government itself in that case.

F. Even if the issues in the *Bond and Share* case were identical with those in the plaintiffs' cases, the stays would be beyond the discretionary power of any court. This is shown in Sections I and II, pages 17 to 36, and Appendix A. The considerations there adduced apply with special force to a stay of the character of the stays in question in suits involving momentous questions of constitutional law of life-and-death importance to the stayed litigants. For the defendants' stay has permitted Government officials to do two things. First, it has permitted them to select out of the many companies to whom the Act is in truth a "death sentence", a single adversary, presenting (as is shown in Section VIII, at pages 66 *et seq.*) a factual *set-up* which they believe is most likely to support their constitutional arguments; it has permitted them to prosecute this preferred suit in a jurisdiction of their own choosing; and it has permitted them to try it, not on the evidence of witnesses in open court, but on facts stipulated between themselves and that adversary. And second, it has permitted them while trying this case to final decision on appeal, to deny to all of their other adversaries the right

to be heard on any of the issues in their own cases, not only on those issues which are similar to but also on those which are entirely different from the issues in the preferred case.

ARGUMENT.

I. FOR PRACTICAL PURPOSES THE STAY AMOUNTS TO A RENUNCIATION OF JURISDICTION BY THE TRIAL COURT

To a litigant suing in the only court which has jurisdiction to entertain his suit, and in urgent need of the speediest relief which that court can possibly give him, it matters not in the least whether the court dismisses his case because of a mistaken belief that it has no jurisdiction over it, or whether, while nominally asserting its jurisdiction, it grants a "stay" of the suit for any length of time beyond what is absolutely required for the proper administration of its other business, and after giving fair consideration also to the adversary party's situation. Since the consequences to the litigant are the same in either case, the court's nominal retention of "jurisdiction" in the latter case becomes a mere legal mockery.*

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*Note as to pleas in abatement. We do not understand that the defendants attempt to justify the stay on any analogy, however remote, to the relief afforded in situations permitting the common-law plea in abatement because of another action pending, or the equivalents of this plea under Practice Acts. Nevertheless, we may point out that such relief (even under the greatest liberalization of the strict common-law rules as to the situations in which it may be granted), always presupposes the *preexistence of another and earlier-commenced action between the same parties and involving the same issues.* Whatever, therefore, may be the form ("stay", dismissal, or what not) of the relief granted in such situations, regarded realistically the relief is justified because, *without causing injury to the party whose suit is abated*, it protects his adversary from being twice vexed by him on the same claim, and also because it protects other litigants in the court granting it from the delays incident to overcrowded calendars.

It is fundamental in our jurisprudence that when a court has jurisdiction it must act, whether it wishes to or not.* Thus (*and precisely in connection with constitutional questions*) Chief Justice Marshall stated in *Cohens* v. *Virginia*, 6 Wheat. 264, 404:

> "It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. *With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution.*** Questions may occur which we would gladly avoid; but we cannot avoid them. All we can do is, to exercise our best judgment, and conscientiously to perform our duty."

In *Henry* v. *Dick Company*, 224 U. S. 1 (1912), the Court reiterated that *irrespective of the consequences* it had no power to refuse to decide a controversy properly before it.***

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*There are, to be sure, certain classes of actions where some courts exercise some degree of discretion in the matter of entertaining jurisdiction. Some courts, for example, exercise such discretionary powers in actions on foreign torts. Another, and more important, class of such cases is exemplified by three decisions of this Court which the defendants have cited in their brief. The total inapplicability of these cases to the situation at bar is shown elsewhere (*infra*, p. 30).

**Italics in quoted matter are always ours unless otherwise noted.

***See also the cases cited and discussed in Appendix A, where even though the parties were the same and the issues identical or practically identical in both suits, the courts have held that they have no power to grant stays merely in order to permit *some other court* to decide the issues first.

Of course, no mere "stay" of proceedings is a denial that jurisdiction exists, or even, in the strict legal sense, a discretionary refusal to entertain jurisdiction. Nevertheless, it is plain that the principles thus enunciated by Chief Justice Marshall apply with equal force *to stays such as the defendants have obtained here.**

For action by a court means not merely some academic "recognition" or "assumption" of jurisdiction. It means the *exercise* of its jurisdiction, *by hearing and deciding the case;* and delay of such action may be, and frequently is, tantamount to denial of relief.

And thus it is that even a *statute* providing for an indefinite stay of certain actions has been held unconstitutional. *Sliosberg* v. *New York Life Insurance Company,* 244 N. Y. 482 (1927). The statute stayed actions on certain Russian contracts until there should be a government in Russia recognized by the United States. The indefinite and possibly prolonged character of the stay was held to impair the obligation of these contracts. It seems equally clear that a plaintiff is deprived of his property without due process of law by a stay, the wholly unnecessary duration of which unreasonably compels him to sustain constantly accruing damages which will continue to increase until he obtains the *final* relief which he seeks.

The defendants, of course, did not seek their stays because the plaintiffs brought their suits in the Supreme

*The defendants' brief states in several places that their stays are "only temporary". We do not know what a permanent stay is, and the defendants do not explain. "Temporary", however, hardly seems to be the best adjective in the dictionary to describe a stay which has already run for almost a year, leaving the plaintiffs' bills not even *answered,* and will almost certainly continue to run for well over another half year at least. Characterizing the delay which the stay has caused in the progress of the plaintiffs' cases as temporary, seems to us much as if a railroad, let us say, should announce that floods which had completely suspended traffic on one of its lines for several days had caused its trains to run "a little off schedule."

Court of the District of Columbia *rather than in some other court.** The stays were sought because the plaintiffs had undertaken to sue *in any court* until the defendants' own suit against Bond and Share should be decided; and this in spite of the fact *that there can be no possible question of the good faith of the plaintiffs in commencing them in the District of Columbia*—the official domicile of the defendants. The defendants cannot be sued in any other jurisdiction without their consent, and, as above shown (p. 6), they have invariably refused to give that consent in the suits against them by other holding companies commenced in other federal district courts (R. 187-188). Accordingly, it will not be disputed that if the plaintiffs had brought their suits in the District Court for the Southern District of New York, where the *Bond and Share* suit is pending, the defendants would have made the same motions to quash the service of process against them that they made *in the four suits by other holding companies which were brought against them in that court* (R. 79-80).

The defendants have never denied that the purpose of their motion for a stay was to secure *a complete monopoly of the litigation involving the constitutionality of the Act* until their own case against their own specially selected defendant is finally determined. And thus, in the guise of a "stay", they have sought and obtained what amounts to a prolonged and indefinite renunciation of jurisdiction of the case by the court in which it was rightfully brought—the only court in which they can be sued without their consent.

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*We may note, however, that even if this had been the fact, *and even if the plaintiffs could have sued in some other court,* there could be no possible analogy to the class of cases referred to in our footnote on page 18, where the courts have exercised discretion in entertaining jurisdiction. See discussion of cases *infra,* pp. 33-35.

Such being the actual nature of the stay, what are the authorities?

II. THE QUESTION ON PRINCIPLE AND ON THE AUTHORITIES.

Introduction

We may concede that we are unable to cite a single case which can be said to be squarely in point on the question presented by this appeal—if by a decision "squarely in point" is meant one which holds that a stay precisely on all fours with the defendants' stay here is an abuse of the discretionary power of any court. But the reason why such a decision seems never to have been rendered would appear to be that heretofore no such stay has ever been requested. We believe that the reason for this wholly unprecedented character of the defendants' motion will undoubtedly be found in the long and uniform current of decisions over many years and in many jurisdictions which, on many varying sets of facts in many types of action, have charted an ambit of permissible discretion in the matter of stays, the farthest reach of which on any possible combination of the material factors could not conceivably be held even to approach a stay such as that which the defendants have obtained. For their stay—*not to mention the pecuniary damages caused by it*—is one which:

(a) is granted *in limine* to the defendant in the stayed suit;

(b) is granted in favor of his own suit commenced in another court simultaneously with the stayed suit; and it

(c) is to continue until the determination on final appeal of the preferred suit, where

(d) such final determination may concededly not be obtained for several years, if at all, and where

(e) the stayed plaintiff is not a party to the preferred suit, is not invited to become a party, and has no right to intervene in it on his own motion, and where also

(f) the issues in the two suits are concededly not identical, but only similar in some aspects.

Mere citation of the cases on which the plaintiffs rely would mean little. To show how clearly they establish the conclusion that no such stay as the defendants have obtained has ever been asked for because it was a foregone conclusion that no court would grant it, it has seemed advisable to state the facts in most of these cases in some detail, together with relevant portions of some of the opinions. In order, therefore, not to interrupt the continuity of this argument, we have placed our consideration of these cases in an Appendix (A), confining ourselves in this portion of our brief to a discussion of the cases which the defendants rely on as justifying their stay.

The Element of Damages Caused by the Stay Itself

The authorities showing that a stay of the character of the defendants' stay is wholly beyond the power or proper discretion of any court to grant, show also that this is so *even without reference to the question whether the stayed party will be pecuniarily damaged by the stay itself.* In

support of this statement, we call attention to the fact that only in a very few of the cases is this factor even mentioned by the courts. Moreover, many of the actions or suits sought to be stayed were merely to recover damages, and in none of these cases was the stay denied because the court found that the delay might make it impossible or difficult for the stayed party to collect his claim when he eventually obtained his judgment. It seems obvious that the reason for this is, not that damages *from the stay* are presumed until the contrary is shown, but that the right of suitors to obtain the promptest possible relief which the courts can give them is one which must be preserved at all hazards if the courts are to retain the confidence and respect of the people.

Nevertheless, it seems clear that the case against such a stay as the defendants' will become completely unanswerable if it can be shown that the stay itself may cause the stayed party great and irreparable damages. That this is the fact in the instant case is, we believe, conclusively shown in other portions of this brief (*infra*, pp. 36-42, 46-48).

The Attempt to Justify the Stay as Relief Analogous to That Afforded on a Bill to Enjoin a Multiplicity of Suits

1. The Law

It is true that in all but a few of the cases concerning stays discussed in Appendix A of this brief only *two* suits were involved—the suit sought to be stayed and the suit sought to be preferred. Can it be said, then, that for this reason the principle of these cases does not extend to a situation where a party seeking a stay of a suit against him,

in favor of a suit of his own choosing against a specially selected defendant, is *also* being sued by a large number of *other* parties? *In other words, can a stay such as the defendants have obtained be justified on the analogy of a bill in equity to enjoin a multiplicity of suits?*

For the defendants' brief nowhere challenges the obvious correctness of the statement in Judge Groner's opinion that the situation at bar *is precisely the same* as if the defendants had sought by original bills in equity to enjoin the respondents here and the other stayed plaintiffs from *commencing* their suits until the final determination of the *Bond and Share* case by this Court.

We submit that there is not even the remotest analogy between the relief which the defendants sought by their stays and the relief sought by a plaintiff in a bill in equity to enjoin a multiplicity of suits. For the undeniable fact is that the purpose of a bill to enjoin a multiplicity of suits *is the direct opposite of the purpose for which the defendants sought their stays*, because a bill to enjoin a multiplicity of suits is brought neither to prevent nor to delay the defendants to it from *themselves* litigating the issues, whatever they may be, between themselves and the plaintiff. It is brought merely for the purpose of compelling them to try these issues along with the trial of the same (or, sometimes, of very similar) issues between the plaintiff and the other defendants. It frequently happens that a person who is threatened in different jurisdictions in which he is amenable to process with a large number of law-suits involving the same or similar issues, is himself unable to obtain valid service of process on all of these potential plaintiffs in one jurisdiction. If it were the law that a person so situated could select one or more of these potential plaintiffs to sue in

one jurisdiction, *and then bring bills in equity against the others in the jurisdictions in which they can be reached with process* to enjoin the prosecution by them of their threatened suits against him;—if such were the law, surely the rule, together with its proper limitations, would long since have been established by the decisions of many courts. For situations in which such a rule, if it existed, would be invoked are by no means of infrequent occurrence, particularly in the case of large modern corporations. But of course the defendants have cited and can cite no decision establishing any such rule or even intimating its possibility *obiter*. We therefore submit that here again the reason why no such relief has ever been sought is obviously that it would all too clearly conflict with the fundamental principles of our jurisprudence discussed above and enunciated and applied in the cases cited by us.*

2. The Facts

We have already shown that the defendants (as indeed they themselves assert) may at any time obtain the dismissal as against them of all the suits brought in the other

*In the light of the fact that the purpose of a bill in equity to enjoin a multiplicity of suits is to bring all the adverse litigants *into court in one suit,* while the admitted purpose of the defendants' stay is precisely to keep all but one of them (Bond and Share) *out of any court,*—in the light of this fact, how can it possibly be material that on a bill to enjoin a multiplicity of suits the issues between the plaintiff and all of the defendants need not always be identical? We respectfully submit, therefore, that the defendants' attempted use of the holding of this Court to this effect in *Di Giovanni* v. *Camden Fire Insurance Association*, 296 U. S. 64 is an obvious misapplication of that decision. Also it is unnecessary to consider here whether in a proper extreme case a party might not be enjoined from prosecuting in one jurisdiction a suit involving the same issues as those in an earlier commenced suit in another jurisdiction between the plaintiff and other parties, *if the enjoined party were offered the opportunity of becoming a party to the earlier suit.*

district courts which have not already been dismissed; that none of these suits has yet been recommenced in the District of Columbia; that one of the seven suits in the District has already been withdrawn; that the plaintiffs in the other suits in the District are all companies belonging to one holding-company system; and that the attorneys for these plaintiffs have agreed that these suits may remain in *statu quo* until after the plaintiffs' cases have been tried; that therefore the alleged multiplicity of pending and imminently *im*pending suits (other than the *Bond and Share* case) involving the constitutionality of the Act reduces itself to two—the plaintiffs' suits;—and that in the *Bond and Share* case there now remain to "tax the facilities of the Government" only the oral arguments and the preparation of the briefs on any appeals to the Circuit Court of Appeals and to this Court. We think it is therefore unnecessary to add anything to this aspect of the cases at bar, except to say that, if any of the suits in the other district courts *should* be recommenced in the District of Columbia, they will not be reached for trial in the ordinary calendar course until at least a year after the plaintiffs' cases have been tried, and that, as concerns answers and such-like matters, the trial court would of course grant the defendants whatever extensions of time they might show to be reasonably necessary.*

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*We should, however, call attention here to a serious error contained in one of the statements in the opinion of the learned trial court—a statement on which he seems to have laid some stress. It was that "counsel seemed to agree" that the cases in the other district courts were defective for want of jurisdiction and that if dismissed they would probably be recommenced in the District of Columbia (R. 31). Counsel did agree that these suits could at any time be dismissed as against these defendants; but the further statement as to counsel's belief that they would probably be recommenced in the District is wholly mistaken—at least so far as plaintiffs' counsel are concerned. And, if counsel for the Government did at that time apprehend a prompt recommencement of any of these cases in the District, the lapse of almost a year without the recommencement of any of them shows that their apprehension was unfounded.

3. The Offer to Select Test Cases.

The refusal of the Attorney General *even to consider* the proposal (*supra*, p. 9) of plaintiffs' counsel, made prior to the motion for the stay and renewed in open court during the oral argument on the motion, that the companies which had instituted these suits against the Commission would cooperate with the defendants in selecting three or four companies, fairly representative of the different types of organizations in the utility industry, whose suits could be consolidated into one test suit and tried in one court, shows, we believe, beyond question that the object of the defendants' motion was not to avoid any real multiplicity of suits against them under the Act, but was to prevent any test of the Act as applied to utility holding company organizations of a type different from the Electric Bond and Share organization until after the decision of this Court in the *Bond and Share* case. The trial court brushed aside this proposal by observing that it "has not been consented to by the defendants", and that counsel for the plaintiffs "cannot answer for the fifty-odd cases now pending in the other courts" (R. 34). We thought that it had been made clear at the hearing that on several occasions prior to the hearing proposals had been made to the defendants on behalf of the utility companies that an arrangement be entered into whereby all of the suits, both in the court below and in the other courts, be held in abeyance, except the three or four cases that might be agreed upon with the defendants as presenting a fair and comprehensive test of the Act, and that the industry was ready to arrange with the defendants a consolidation of the cases so agreed upon in one trial in one court. The proposal made by plaintiffs' counsel in

the court below, which is quoted in full earlier in this brief (p. 9), made it clear that counsel was referring *not only* to the cases instituted in the court below, but also to all of the cases brought by the other companies in the other district courts.

The point is, not that the parties after conferences might have failed to agree on the other cases to be selected; *the point is the Government's flat refusal even to consider the proposal.*

Certainly the resources of the Department of Justice and of the Commission would not be unreasonably taxed or their combined legal staffs be inadequate to engage in the trial of the *Bond and Share* case and also in the consolidated trial of two or three other test cases selected by the defendants in cooperation with the industry. So far as concerns the plaintiffs at bar, we do not believe that the Government will dispute that it has long since collected what it believes to be the important material facts concerning their business.* And if the defendants are correct in their contention that most or many of the issues in the plaintiffs' cases will be presented in the *Bond and Share* case, their preparation for the trial of that case must also have covered most of the preparation for the trial of the plaintiffs' cases.

The defendants' brief also argues that counsel's offer to select test cases is inconsistent with the plaintiffs' assertion that they are being injured by the stay.

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*See the frequent references in the defendants' brief (pp. 55-58, 88, 89, 92) to the Report of the Committee on Interstate and Foreign Commerce of the House of Representatives, pursuant to H. Res. No. 59, 72nd Cong., 1st Sess., and H. J. Res. No. 572, 72nd Cong., 2nd Sess., House Report No. 827, Part 3, and the detailed statements of facts concerning the nature and character of the plaintiffs' business in the Attorney General's affidavit (R. 39-40).

We believe that the Court will see from our discussion of the Government's briefs in the *Bond and Share* case (see *infra*, pp. 51-75) that Bond and Share was undoubtedly selected by the Government as its defendant principally because it believed that, if the Act is held constitutional as to only some of the holding companies, within the definition of Section 2(a)(7), then Bond and Share is a clear example of the one type of holding company as to which, upon the Government's contentions, the Act should be held constitutional. This is because of Bond and Share's alleged interstate servicing activities, and because of the relations which the Government asserts that the evidence in the *Bond and Share* case shows to exist between Bond and Share itself and the operating subsidiaries in the Bond and Share system which are engaged in interstate commerce,—relations which the Government contends justify a finding that Bond and Share is *itself* engaged in interstate commerce. Accordingly, if the Government had consented to select other test suits, an effort should of course have been made to select for one of these suits a holding company at the other end of the scale—namely, a holding company doing no intercompany or interstate servicing at all, and the operating subsidiaries of which could not possibly be regarded as its "dummies", whatever might be its stock investment in them, direct or indirect. Plaintiffs' bills show clearly that one or both of them are holding companies of this latter type and not of the type asserted by the Government's briefs in the *Bond and Share* case to be exemplified by Bond and Share.

And lastly,—*and since the defendants' argument necessarily assumes that neither of the plaintiffs' suits would have been selected as one of the test cases*—we think that there is

no impropriety in our stating that the defendants at the time knew that they would be able to obtain the consent of the other stayed plaintiffs and of the industry as a whole to having one or both of the plaintiffs' cases selected as test cases. The above completely answers the point that counsel's offer to select test cases is an admission that the stay is innocuous.

The Cases Relied On by the Defendants

We submit the following statement as to the facts and decisions in the cases on which the defendants mainly rely to justify the stay.

Kansas City Southern Railway Company v. *United States*, 282 U. S. 760 (dfts.' brief, p. 27). This case is merely an illustration of the settled rule that a plaintiff's suit may be stayed for proper reasons, *when he has a complete and prompt remedy in another pending suit, in which he is already a party or to which he has the right to become a party.* A number of railway companies had been parties to a single proceeding in which an order affecting rates for transportation of private cars had been entered by the Interstate Commerce Commission. Two groups of companies attacked the order, one by a suit in Kentucky and the other by a later suit in Missouri. The Commission and the Government made no reference in their answer in the Missouri suit to the prior Kentucky suit. The Kentucky suit resulted in a decree sustaining the order of the Commission. The Commission and the Government thereupon, and on the day of final hearing, filed an amended answer in the Missouri suit, setting up the decree in the Kentucky suit as an affirmative defense and asserting that, under the Act redistributing the jurisdiction of the Com-

merce Court, the jurisdiction of one district court could not be invoked to enjoin an order of the Commission after the order had been sustained by another district court. This Court overruled this affirmative defense, but sustained the Commission's order on the merits. In overruling the affirmative defense, the Court held that the court in Missouri committed no error in proceeding with the cause, notwithstanding the prior decision of the court in Kentucky, the opinion, however, stating *obiter* that the court in Missouri might, in its sound discretion, upon a timely application, have stayed the case before it pending the decision in the Kentucky case. The Court's reason for this statement was as follows (p. 763):

> "The appellants, [the railway companies] upon proper application *could have been allowed to intervene in the earlier suit* * * * and could have presented *there all of their grounds of attack* upon the orders in question."

In contrast, the plaintiffs here have no right to intervene in the *Bond and Share* case, nor could the court lawfully permit them to intervene; and the admitted object of the stay sought by the defendants at bar is to *prevent* the plaintiffs from procuring an adjudication of their rights in *any* suit until after defendants have prosecuted their own suit against Electric Bond and Share Company to a decision in this Court.

Moreover, the order in question in the *Kansas City Southern* case was one clearly applicable alike to all carriers and a decision on the validity of the order in one case would necessarily have been completely applicable in the other. In addition, there is absolutely nothing in the decision to indicate that the companies whose suits might,

upon application, have been stayed, would have in any wise been injured by the delay in the trial of their cases.

For all of the above reasons, the *obiter* from this case, relied upon by the defendants, can have no application to the cases at bar.

Friedman v. *Harrington*, 56 Fed. 860 (C. C. D. Mass., 1893) (dfts.' brief, p. 30). The bill was to enjoin the enforcement of a Massachusetts statute, alleged to be unconstitutional. *The question arose on a demurrer to the bill.* The court declined to pass on the demurrer, and continued the case *merely until the next term of the court.* The reasons for this short continuance were (a) that the question of the constitutionality of the statute *was already before the Supreme Court in two other cases which were likely to be "speedily reached"*, and (b) *that the property rights of the defendant were not endangered by this slight delay.*

Enelow v. *New York Life Insurance Co.*, 293 U. S. 379 (dfts.' brief, p. 26). Apparently this case has been cited simply because of a single sentence in the opinion with reference to the general powers of courts to grant stays "to maintain the orderly processes of justice". As the facts show,* the Chief Justice was merely pointing out in

*The action was an ordinary action at law on a policy of life insurance brought by the death beneficiary. The defendant pleaded affirmatively fraud in the procurement of the policy, and then moved, under Section 274(b) of the Judicial Code (28 U. S. C. 398) for an order staying the trial of the action at law until the issues raised by the defense of fraud had been tried in equity, *i.e.*, without a jury. The holding of this Court was that the defense was a good defense at law, and that therefore Section 274(b) of the Judicial Code did not apply, and that the defendant was not entitled to the "stay" which had been granted to it, and which, as the Court said, was the statutory equivalent of an injunction in equity against the prosecution of an action at law.

this statement the plain distinction between the ancient equitable jurisdiction of courts of equity to enjoin actions at law, and the power of *all* courts—"a court of law as well as a court of equity"—to grant reasonable delays, continuances or other "stays" in any case, in order "to control the progress of the cause so as to maintain the orderly processes of justice".

No one disputes that the courts do not need express constitutional or statutory authorization in order to grant reasonable adjournments and other postponements of pending litigation. And of course the only difference between the ordinary extension of time, continuance, adjournment, or other postponement in a judicial proceeding, and what is ordinarily called a "stay of proceedings", is that the former are usually adjournments of *specific* steps or processes in the suit, while the word "stay" is usually applied to the form of adjournment which, during its continuance, applies to all further proceedings therein. But a "stay" in this latter sense is not necessarily, or usually, *a stay in limine for an indefinite time in the future.*

The three other cases mainly relied on in the defendants' brief are of an entirely different sort. These cases are *Pennsylvania* v. *Williams*, 294 U. S. 176; *Gordon* v. *Ominsky*, 294 U. S. 186; and *Penn General Casualty Co.* v. *Pennsylvania*, 294 U. S. 189 (dfts.' brief, pp. 31, 32, 43).

It is difficult for us to understand how counsel can believe these cases to have any bearing on the situation at bar. For the cases obviously involve only the question of the proper comity *between the Federal and State courts.* They are cases where this Court held that the Federal courts should relinquish jurisdiction in favor of the State courts, where the latter already had complete jurisdiction

(*in rem or quasi in rem*) of the subject matter of the litigation, and full power to grant prompt relief *to all parties to it*—cases, that is, where this Court held that the Federal courts should not interfere with the state courts which were proceeding properly in the administration of the affairs of their own insolvent domestic corporations.

These cases, therefore, involve a mere choice between conflicting jurisdictions, and where the court to which the plaintiff was remitted for reasons of comity could give him as prompt and complete a remedy as the court from which he was sent. The stays at bar, on the other hand, involve a denial to the plaintiffs of a prompt and full adjudication of their cases in *any* jurisdiction (since the defendants cannot be sued outside the District of Columbia), in face of the certainty that they will suffer great and irreparable losses during a long and enforced delay.

The principle of these cases has again been affirmed in *Commonwealth Trust Company* v. *Bradford*, 297 U. S. 613 (1936). In that case this Court, in holding that jurisdiction should not have been relinquished on the ground of comity, said:

> *"Jurisdiction having been properly invoked, it became the duty of the trial court to determine the issues, unless required by rules based on comity to relegate the complainant to the State Court.*
>
> * * *
>
> "The trial court properly exercised the jurisdiction which it acquired. The doctrine approved in *Pennsylvania* v. *Williams*, 294 U. S. 176, 79 L. Ed. 841, 55 S. Ct. 380, 96 A. L. R. 1166, and *Penn General Casualty Co.* v. *Pennsylvania*, 294 U. S. 189, 79 L. Ed. 850, 55 S. Ct. 386, *supra*, is not applicable. In each of those cases we found conflict

> between the Federal Court and authorities of the State concerning liquidation of the business and assets of an insolvent local corporation."

How then can these cases be considered as authority for a stay which (a) prevents the plaintiffs from prosecuting their suits in the only jurisdiction open to them, in order that the defendants may first prosecute another suit, in another Federal court, on other facts, against other parties, to a final judgment on appeal, (b) causes the plaintiffs serious damages through the delay of their own suits, and (c) permits the defendants to obtain a decision to be used later against the plaintiffs?

And of course even the defendants, who have been able to discover so many other things in the opinion (or, as it pleases them to call it, "the Findings") of the learned trial court, do not profess to have discovered in it a finding that, in the words of the song from The Mikado, "the deference due" by the District Court for the District of Columbia to the District Court for the Southern District of New York requires that precedence be given to the latter over the former in the decision of constitutional questions.*

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*Counsel also assert that these recent decisions of this Court virtually overrule or are inconsistent with some of the cases on which we rely (collected in Appendix A hereto)—particularly some of the earlier Federal cases in which suits in State courts were sought to be given preference over suits in the Federal courts. They say that these earlier cases apply a "narrower rule" as to the occasions on which a Federal court will relinquish jurisdiction in favor of a State court. We submit respectfully that this is simply not so: that not one of these earlier cases could have been decided differently under the principle of these later decisions, and that not one contains language at variance with that principle.

III. THE BILL OF EACH PLAINTIFF SHOWS CLEARLY THAT IT IS NOW SUFFERING IRREPARABLE DAMAGES WHICH WILL CONTINUE TO INCREASE UNTIL IT OBTAINS THE *FINAL* RELIEF PRAYED FOR

We show elsewhere (*supra*, pp. 22-23) that the decisions which establish the principle that the courts are without power to grant blanket *in limine* stays extending over indefinite but probably long periods* rarely, if ever, consider the question whether the stayed party will suffer pecuniary damages from the particular stay in question; and we show also why this is so.

Nevertheless, in the event that the Court should be of the opinion that the stay at bar might be justified if it appears that the plaintiffs will not be injured by it, we wish to show that the defendants' contentions to the effect that the stay will not injure the plaintiffs are completely untenable.

Of course, we do not dispute that *the stay itself* will not have caused any damages to the plaintiffs if it can be demonstrated that the stay will not postpone the relief for which their bills pray; but the defendants will not deny that they have not even attempted to demonstrate any such proposition as this. At most, they argue that the stay *may not* so postpone the final decision of the plaintiffs' cases. These arguments are answered in other portions of this brief. (See *infra*, pp. 51 *et seq.*).

For the present, therefore, we confine ourselves to discussing the nature of the damages shown by the plaintiffs'

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*The authorities, which are unanimous, are collected and discussed in Appendix A.

bills, since it is evident that, if the above arguments of the defendants are not valid, the damages caused by the stay are exactly the same as the damages which the bills show that the plaintiffs were then suffering and would continue to suffer until the plaintiffs obtain *final* relief.

The acts and activities which are prohibited to unregistered companies by the Act (Section 4(a)) are stated in a footnote.* A reading of these prohibitions is enough to show that, if they are observed, they will make impossible the carrying on of a normal and profitable business by any holding company, in spite of the fact that many of

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*They are:

"(1) to sell, transport, transmit, or distribute or own or operate any utility assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce;

(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

(5) to engage in any business in interstate commerce; or

(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5), inclusive, of this subsection."

them are in form prohibitions merely against doing the specified acts by the use of the mails or the instrumentalities of interstate commerce. And it is equally clear that, if these prohibitions are ignored, the cloud which will be cast on the legality of the contracts and other acts of such a company will paralyze its business to practically an equal extent. THAT THIS WAS BOTH THE INTENTION OF THE FRAMERS OF THE ACT AND THE EXPECTATION OF THOSE NOW ADMINISTERING IT IS CLEARLY SHOWN BY THE STATEMENT OF THE DEFENDANT LANDIS, CHAIRMAN OF THE COMMISSION, IN A PRESS RELEASE OF NOVEMBER 7, 1935, IN WHICH HE ASSERTED THAT

> "unless a holding company registers, the validity of any issue of securities which it may offer and of all acquisitions of property and of contracts made by it would be in question, at least until a *final* decision upon the issue of constitutionality was handed down by the Supreme Court."*

It was not therefore the fear of criminal prosecutions for not registering or for doing any of the acts prohibited to unregistered companies which principally compelled the plaintiffs to seek relief in equity. The plaintiffs would welcome prompt prosecution for their failure to register, since the decision in such a case might determine, as promptly as would a final decision in these cases, whether or not they have anything to fear from the Act. But this of course is precisely what the defendants have declared that they will not do,—although they assert the Act to be constitutional and threaten eventually to compel the plaintiffs to comply with it. Nevertheless, they have in effect declared their intention not to do so until the Act has been

*The New York Times, page 1, November 8, 1935.

held constitutional as against some *other* company,—thus not only leaving the plaintiffs in their above predicament during the interval, but with the added possibility that such a decision holding the Act constitutional may hold it constitutional on grounds which will still leave undetermined the question whether it is constitutional as against the plaintiffs, so that they would be held in the above legal limbo for an additional period of unpredictable duration.

If it were the purpose of the defendants to inflict the maximum of injury upon the plaintiffs, they could not have chosen any method more certain to accomplish that result.

The business of each plaintiff is fundamentally the conservation and enhancement of the values of its investments aggregating several hundred million dollars (R. 3-5; AWW. R. 4-6). Intelligent administration of such a business cannot be immobile and passive, but must be active, alive, and far-sighted. Freedom of action is absolutely essential, but such freedom is impossible without *knowledge of what may lawfully be done*, and without assurance of continuity of existence.

Until therefore the plaintiffs obtain a decree declaring the Act to be unconstitutional as against them, the validity of most of their corporate relationships and of practically every transaction or activity in which they normally engage will be subject to doubt and question. As the defendant Landis has himself suggested, what banker would undertake to sell, by public offering, an issue of their securities, until this stigma of illegality is removed by a *final* decision that the Act is void as applied to them? What must be the effect of that stigma upon *any* effort by them to negotiate a major or long-term contract, or to refund any of their outstanding securities or obligations?

For these reasons, it is clear that the Act, as is fully alleged in the bill of each plaintiff, constitutes a present and substantial cloud and encumbrance on its title to its investments, a present and substantial impairment of its freedom of contract, and a present impairment of its credit and of the value of its securities and other property. (See R. 6-22; AWW. R. 6-22).

And it is just as clear that although the plaintiffs have not registered, the provisions of the Act with respect to *registered* companies have to a large extent precisely the same paralyzing effect on the plaintiffs today as they would have if the plaintiffs had registered, since, in the event that the Act is held to be constitutional as to them, they will eventually be compelled to register and submit to its provisions applicable to registered companies. This is particularly true as to Section 11 of the Act, which contains the so-called "death sentence". If the Act is constitutional as to the plaintiffs, their refusal to register has rendered no less inevitable the infliction of this "death sentence" on them; so that their failure to register has in no way minimized the effect of this threat of complete corporate dismemberment and dissolution. And it is obvious that no large holding company like the plaintiffs, with this threat of early dismemberment and dissolution hanging over it, can make long-range plans, or give such assurances of permanent employment as are necessary in order to procure and retain efficient officers and a skilled executive and technical staff; or make the property acquisitions or long-term contracts that are essential to its growth and prosperity. Because of Section 11 every such company, whether registered or unregistered, must necessarily abandon policies followed by it over many years and necessary to its con-

tinued welfare, in favor of temporary expedients designed to tide it over the period of uncertainty (R. 6-11; AWW. R. 9-10). It goes without saying that this means not only immense, but also irreparable pecuniary loss.

We have already referred (p. 10) to the offers of the Commission to accept notices of registration under the Act containing "without prejudice" clauses. We think the above sufficiently shows that the plaintiffs could not escape the damages shown by their bills by registering under the Act, but on that point we also refer the Court to the later section of this brief (pp. 42-44) where this alleged justification of the stays is discussed. The bills of both plaintiffs allege fully the effect on them of the provisions of the Act dealing with registered companies, and the bill of the American Water Works Company (AWW. R. 17) expressly alleges that, although it is impossible to make precise calculations in the matter, the damages which it would suffer from registering appear to be at least as great as those which it is suffering as an unregistered company.

We submit that the above discussion shows clearly that the plaintiffs could not escape or minimize their damages by accepting the defendants' offer of a *temporary* injunction pending the decision of the *Bond and Share* case, but we also refer the Court to a special discussion of this offer in another Section (pp. 46-48).

And lastly, any argument based on the declarations of the defendants that non-registering holding companies will not be prosecuted for failing to register, or for doing any of the acts prohibited to unregistered companies, until after the Act has been held constitutional, will, we believe, be found to be fully answered in the Section (*infra*, pp. 45-46) dealing with the defendants' theory that the bills do not

show any right to affirmative relief in equity against registration because they do not show present threats to enforce the Act.

One other important point is to be noted: namely, that the question whether the provisions of the Act with respect to *registered* companies *are now damaging* the plaintiffs, *has nothing whatever to do* with the question whether these provisions of the Act are relevant in determining *whether the plaintiffs can constitutionally be required to register*. We call attention to this fact because it seems to us that the defendants' brief constantly confuses these two questions. But manifestly the actuality of the damages caused by these provisions of the Act to an unregistered company is the same whether these provisions are or are not to be taken into consideration in determining whether that company can constitutionally be required to register.

IV. THE COMMISSION'S OFFER TO PERMIT HOLDING COMPANIES TO REGISTER UNDER THE ACT "WITHOUT PREJUDICE"

The facts as to the Commission's offer to accept "without prejudice" notices of registration have already been stated (*supra*, p. 10).

The question, of course, is simply this: *how can this offer of the Commission justify the stay of these suits brought by non-registering companies?**

*We are assuming (though merely for the purpose of the argument) that "without-prejudice" notices of registration would be effective to their fullest possible extent, and also that this would *not* be true except for the offer of the Commission to accept such notices of registration. We therefore do not discuss whether, or to what extent, such reservations would be effective as against some later contention of the Government that registering under the Act constitutes a waiver of, or an estoppel to assert, its unconstitutionality generally or the unconstitutionality of any of its provisions.

Have the defendants stated that they have not sought or will not seek stays in suits brought against them by *registered* companies? Of course not. Do they admit that they would not be entitled to stays in such suits? Of course not. Do they argue that such a suit by a registered company would test "the validity of the essential features of the Act" more radically or thoroughly than these suits do? They do not. Do they say that such suits by registered companies would "clog the courts and overtax the facilities of the Government" less than suits of the same sort by non-registered companies,—that, for example, it would not take so long to prepare such suits for trial or to try them? They do not.

Have the defendants alleged that the damages which the Act is today causing the plaintiffs as unregistered companies, and which have driven them to seek relief in equity, would be less if the plaintiffs had registered? They have not, and the plaintiffs' bills show that this is not so.

How then can the stay be justified by the plaintiffs' failure to accept the Commission's invitation to register "without prejudice"? It would seem clear that any such justification must rest on some assumed moral obligation to accept this offer to register; and we think that this assumption underlies the many insinuations in the defendants' briefs and other papers that the refusal of the plaintiffs to register, together with the refusal of the great majority of the other utility companies subject to the Act to do so, is evidence of some sinister conspiracy among the utilities to attack the constitutionality of the Act unfairly and hamstring its administration by unethical methods. The Court will search the record in vain for any attempt by the defendants, other than as above stated,

to show *how* the rejection by the plaintiffs of the Commission's invitation to register without prejudice *can possibly have the slightest bearing on the merits of the motion for the stay.*

The defendants, however, have not pointed out a single reason, in law, equity, or business morals, why a holding company which is irreparably injured whether or not it registers, and which believes the Act to be unconstitutional as to itself, and which desires to test its constitutionality as promptly as possible should not do this *by refusing to register* and commencing a suit like the present suit,—*even though the company knew positively that it could, by an appropriate "reservation", register under the Act without thereby waiving its right to challenge, or estopping itself from thereafter challenging, its constitutionality in any respect whatsoever.*

We do not question the good faith of the Commission in making its offer to accept "without-prejudice" notices of registration; but the Commission's good faith is not the point. The point is that any holding company which believed the Act to be unconstitutional as to it, and which therefore for any reason preferred, despite the Commission's offer, to maintain the status of an unregistered company, remained, both legally and morally, as free to maintain that status after that offer as it had been before.

The Commission's offer to accept "without prejudice" registrations, moreover, *completely ignores the fact that registration by a holding company makes each and every one of its subsidiary companies subject to the Act, whether its registration is "without prejudice" or not.* This fact alone would afford ample reason for the refusal of any holding company to accept the Commission's offer.

V. PLAINTIFFS' RIGHT TO RELIEF IN EQUITY

The defendants' answer to the plaintiffs' petition for leave to appeal to the Court of Appeals contained the following admission (R. 204):

> "The respondents [now the petitioners] aver that *whether the petitioner's bill is ultimately determined to be with or without equity is irrelevant to the granting or denying of the stay.* The respondents did not move to dismiss petitioner's bill."

In spite of this disclaimer of the relevancy of the question whether the plaintiffs' bills show that they are entitled to equitable relief against the Act, the defendants' brief still questions the equity of the plaintiffs' bills.

We have already shown (*supra*, pp. 36-42) exactly how and why the plaintiffs are today suffering irreparable injury which they will continue to suffer until they obtain the *final* relief demanded by their bills. That no remedy exists at law is undisputed.

It is true that the announcements published by the defendants which we have heretofore referred to (p. 10) show that the plaintiffs need not at present fear a multiplicity of prosecutions under the penal provisions of the Act with reference to unregistered companies unless, of course, the defendants see fit to change their minds, as they are entirely at liberty to do. But the jurisdiction of equity to enjoin a multiplicity of illegal prosecutions is only one branch of its age-old jurisdiction to intervene to prevent irreparable injury.

Under various forms of statement, however, the defendants' brief asserts that the plaintiffs' bills do not sufficiently show present threats to enforce the Act against them to justify injunctive relief in equity. If by "present threats

to enforce" is meant threats to enforce at present or in the immediate future, there are of course no such threats, other than the standing threat flowing from the duty of governmental officials to enforce the law as written. But it is not denied that the defendants are vehemently asserting the constitutionality of the Act as against the plaintiffs, and that they do threaten to enforce it against them if and when they obtain a decision in the *Bond and Share* case which they think will sustain such enforcement; and it is of course *this* threat which is causing the damages alleged in the bills and heretofore discussed (*supra*, pp. 36-42). We believe, therefore, that the situation thus created falls clearly within the rule of the many decisions of this Court permitting injunctive relief against the enforcement of unconstitutional laws, even when there are no threats to enforce at once or in the near future. The cases are discussed in Appendix B of this brief.

It is also pertinent to remark that if the defendants really believed that their announcements that they will not prosecute non-registering companies for the present was a sufficient disproof of "threats to enforce" to deprive such companies of the right to affirmative relief in equity against the Act, *their stay was wholly unnecessary.* They had only to move to dismiss the plaintiffs' bills.

VI. THE OFFER OF A TEMPORARY INJUNCTION

The opinion of the learned trial court stresses the defendants' offer of a temporary injunction and shows, we believe, that the court considered this offer to be one of the principal justifications for the stay.* But the opinion no-

*This is only one of the reasons for the stay given in the opinion which the defendants are pleased to characterize as "Findings". They do not, however, refer to any evidence in support of it.

where attempts to show *how* such an injunction would even minimize the damages which the plaintiffs' bills show that the Act is causing them and will continue to cause them until they obtain *final* relief. And of course unless this can be shown the stay cannot be justified by the offer of the temporary injunction. And the repeated assertions in the defendants' brief that the offered injunction would make the stay innocuous are also, we believe, unsupported by a single reason.

It is undeniable and undenied that the only effect of such a temporary injunction would be to remove threats of immediate prosecutions under the penal provisions of the Act. These threats, however, had already been removed by the announcements of the defendants that they would not prosecute non-registering holding companies until after a decision in the *Bond and Share* suit holding the Act constitutional; and, as we have already shown, threats of immediate prosecution under the Act were precisely *not* the threats which were causing the damages to the plaintiffs which compelled them to ask for affirmative relief in equity. For the defendants would of course welcome a prompt prosecution for failure to register or a mandamus suit to compel them to register, because such a suit would give them the same opportunity for that prompt test of the constitutionality of the Act as applied to them which they are seeking by their present bills, and which the defendants by their stays have prevented.

We submit, therefore, that the complete answer to the alleged justification of the stay based on the defendants' offer of a temporary injunction is that *the present and continuing injury which the plaintiffs are suffering from the cloud which the Act casts upon the legality of most of*

their contracts and activities, and from the overhanging threat of dismemberment and dissolution in 1938, can be removed only by a FINAL *decree adjudging the Act to be unconstitutional as to them.*

VII. THE DEFENDANTS' ARGUMENT BASED ON THEIR THREAT TO DEFAULT IF THE STAY IS NOT GRANTED, *PENNSYLVANIA* v. *WHEELING BRIDGE CO.*

The defendants' brief argues that a final decree for the plaintiffs would be nullified (or, if not automatically nullified, could by some appropriate proceeding* be set aside) if the *Bond and Share* case is decided by this Court in favor of the Government on grounds which would render the decision applicable to the plaintiffs on the facts as to the plaintiffs' business alleged in the plaintiffs' bills. They assert that the case of *Pennsylvania* v. *Wheeling Bridge Company*, 59 U. S. 421 is authority for this proposition.

The Court will see at once that the question thus presented will arise *only if the stay is vacated* and if thereafter the defendants default, leaving the plaintiffs to take a decree against them *pro confesso***. And so, both on their oral argument and in their reply brief in the trial court, the defendants definitely threatened so to default if their stay

*Other of course than a direct appeal by the defendants, for the argument necessarily assumes that the time for a direct appeal will have expired.

**Of course no final decree against the defendants could be rendered even after a default unless the trial court was of the opinion that the Act was unconstitutional as against the plaintiffs on the facts alleged in their bills; but equally of course any such decree after default would be *res judicata* as to these *facts*, whether the defendants are right or wrong about the law as declared in the *Wheeling Bridge* case.

were not granted*, though for some reason they have not chosen to be quite so explicit about it in their present brief.**

This is the first instance in our experience where a litigant, asking the court to exercise its discretion in his behalf, has suggested that if the court should fail to grant his request, he would defeat the court's action against him by resorting to a device which he claims would nullify it.

We believe that it requires no argument to show that a court should not permit its discretion thus to be coerced. It should proceed in its normal course, and should put upon the defendants the risk of deciding whether to defend cases properly brought against them, or to default and rely upon the device which they assert (quite mistakenly as we think) would enable them to avoid any prejudice from such default.***

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*The opinion of the trial court states (R. p. 34):

> "If the defendants, *as they state they probably will do*, in the event these suits are not stayed, permit them to go by default, it is difficult to see how the plaintiffs would be any better off than if the suits were stayed. * * * The plaintiffs * * * could not appeal from a decree of this court in their favor, * * *."

The defendants' Reply Brief in the court below (p. 5) contained the following statement:

> "But since the Government *cannot pretend to defend these suits*, and since these plaintiffs cannot appeal any decree, which this Court may render in their favor, a final decree will be of no more advantage to them than a temporary decree."

**We think we may safely assume that the defendants do not contemplate answering the plaintiffs' bills, trying the cases on the merits, and *then*, if the decision is against them and the *Bond and Share* case still undecided, deliberately allowing their time to appeal to expire, in the hope of getting a final decision in the *Bond and Share* case on which they may rely to nullify or vacate the decree against them in the plaintiffs' cases.

***Moreover, as we have already pointed out (pp. 25-27), there is no longer any excuse for such a default on account of any threatened multiplicity of suits.

Equally astonishing is the complete *non-sequitur* contained in the argument by which the defendants' above proposition of law is sought to be made *a justification for the stay*. For the argument necessarily comes to this:

> If the stay we request is not granted, we have the 'right' nevertheless, by suffering judgment to go against us by default in this suit, to prevent it from being tried on the merits; and if we do this, and if our other suit is decided in our favor, the judgment in it (by reason of the similarity of the issues in the two suits) will render the default judgment against us in this suit unenforceable. *Therefore we are entitled to our stay!*

In other words, we have here a litigant alleging the very remedy which he claims lies in his own hands as his reason for asking the assistance of the court. For if the defendants are right about the holding in the *Wheeling Bridge* case, they have only to permit a decree by default to be taken against them in this case, and then, if and when the *Bond and Share* case is decided in their favor in such a way as to make it conclusive of the plaintiffs' cases, they can take whatever steps may be necessary to vacate, reverse, or otherwise nullify the default decree against them.

The defendants naturally have not put the argument in a form which reveals its fatal self-contradiction quite so glaringly as does the above statement of it.

The argument* seems to be to the effect that *the stay will not injure the plaintiffs.* In this form it would run as follows:

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*Apart from gratuitous and, we submit, wholly unjustified attempts to discredit the plaintiffs by charging them with trying to make a decree *in their favor* "the vehicle of an appeal".

> The stay will not injure the plaintiffs because, even if it had been denied, the plaintiffs would still continue, *should the defendants default*, to suffer *precisely the same damages to which the stay would subject them.*

But this is obviously only a disingenuous way of saying that *"the injury to the plaintiffs will not be caused by the stay"*, which is simply not so, because *if the stay is granted there will be no default decree.* In short, the defendants are asking the Court to inflict the injury, because (so they say) they have it within *their* power to inflict it if the Court declines to act. We submit that an argument of this sort requires no further discussion.

For the foregoing reasons it is wholly unnecessary in this case to consider whether the decision in the *Wheeling Bridge* case is authority for the proposition that an unappealed final decree in favor of the plaintiffs might be rendered nugatory by a later decision of the *Bond and Share* case by this Court in favor of the Government. However, since we do not think that the *Wheeling Bridge* case stands for any such proposition, we have discussed it and the other cases cited by the defendants in this connection in an Appendix (Appendix C), should the Court wish to consider the question.

VIII.—THE *BOND AND SHARE* CASE.

We submit that what we have heretofore said makes it unnecessary for the Court to consider the elaborate discussion of the *Bond and Share* case contained in the defendants' brief. Nevertheless, should the Court be of the

opinion that mere similarity of issues between two cases simultaneously commenced in different courts may in certain circumstances justify the granting to the only party common to both cases of an *in limine* stay of one of them until the final determination of the other by the court of last appeal, we believe that we can show clearly that no such circumstances exist in the case at bar.

It seems to be entirely clear that the defendants' discussion of the *Bond and Share* case proceeds throughout on the implied assumption that the stay can be justified if the defendants can show merely a sufficiently close similarity between the character of the business done by Bond and Share itself (or by one or more of its holding-company subsidiaries which are now parties to the suit), and the character of the business done by the plaintiffs and their subsidiaries as shown by their bills in the cases at bar.

We most emphatically challenge the correctness of this assumption.

Stated briefly, its manifest vice consists in the fact that, even if the relevant business of the Bond and Share Company (or of one of its holding-company subsidiaries) was *identical* with the relevant business of the plaintiffs, *the stay itself* will still have caused irreparable injury to the plaintiffs, unless (a) the *Bond and Share* case reaches and is decided by this Court, and unless (b) the decision of this Court (if it is in favor of the Government) is in substance to the effect that the Act is constitutional as to the Bond and Share Company (or as to one of its subsidiary holding companies) *precisely because of the facts with respect to the business of such company which make its business identical with the business done by the plaintiffs.*

For it is indisputable that if the *Bond and Share* case either never reaches decision in this Court, or is decided by this Court in favor of the Government on grounds substantially different from those which we have just indicated, then *the stay itself* (since the plaintiffs' bills will still remain not even *answered*) will have added at least a year and a half, and very likely a good deal more, to the time during which the plaintiffs will have had to wait for either a decision of their own cases on the merits, or a decision in the *Bond and Share* case which will really "clarify" the issues in their cases.*

The discussion of the *Bond and Share* case in the defendants' brief tacitly ignores the possibility of such an outcome of the *Bond and Share* case. The purpose of subdivisions "First" to "Sixth", inclusive, of this section of our brief is to show that *in their briefs in the Bond and Share case the defendants themselves argue at length that such an outcome of the Bond and Share case is probable or possible.* These arguments are a part of the elaborately argued propositions of law by which the defendants seek to limit the scope of the *Bond and Share* case to the single question of the constitutionality of the provision of the Act requiring registration.

The purpose of subdivision *"Seventh"* of this Section is the same, and *also* to show that the defendants have *not* shown any similarity between any important issues of fact in the plaintiffs' cases and in the *Bond and Share* case which can possibly justify the stay—assuming for the purpose of argument that demonstrated similarity of some of

*We are of course not speaking of a decision *against* the Government in the *Bond and Share* case which the Government will recognize as decisive of the plaintiffs' cases.

such important issues of fact might be held to justify the stay.

The Court will understand that in what we have to say in this Section as to the legal positions taken by the Government in its briefs in the *Bond and Share* case, we are merely stating what those positions are. We wish to make it clear that we do not subscribe to any of them.

We assume that it is entirely permissible in this discussion of the *Bond and Share* case to refer to the stipulated facts on which that case will be tried in the district court and to the arguments made in the Government's briefs already filed in it. Not only does the defendants' brief do the same thing,* but the Court will also recall (see *supra,* pp. 7-8) that in the Court of Appeals the defendants relied on many matters which were not shown by the record in the trial court, and not even called to its attention—including events which occurred after the granting of the stays. Indeed, it seems quite clear that the defendants now recognize that the similarity between the issues in the plaintiffs' cases and the issues in the *Bond and Share* case, *as any such similarity is disclosed by the record in the trial court*—the original bill in the *Bond and Share* case and the bills in the plaintiffs' cases—is wholly insufficient to support the stay. This omission the defendants therefore now attempt to supply by argu-

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*Indeed, we believe that the Court will see that the point on which the defendants now place their *main reliance* in this connection is the alleged virtual identity of the business done on the one hand by the plaintiffs and their subsidiaries, as shown by the plaintiffs' bills, and the business done on the other hand by two of the Bond and Share holding-company subsidiaries and their subsidiaries, *as shown by the stipulated facts in the Bond and Share* case. This alleged similarity is fully discussed under subdivision *Seventh.*

ments based on what the record in the *Bond and Share* case shows *as it now stands. Our reply is that that record as it now stands contains its own complete answers to these arguments.*

We therefore will now show the different outcomes of the *Bond and Share* case (including decisions of it by this Court) which would certainly or probably result in making *the stay itself* the cause of irreparable injury to the plaintiffs. With one exception, each of these outcomes of the *Bond and Share* case is definitely foreseen as probable or possible by the Government's briefs in that case, and some of them are outcomes which must or may be the result of propositions of law definitely argued by the Government in those briefs, if this Court sustains those propositions.

First. There is, of course, the possibility that the losing party may not appeal from the decision in the *Bond and Share* case. The Government in other recent cases involving important constitutional questions has failed to appeal, or, having appealed, has dismissed its appeal before argument.

If that eventuality should develop in the *Bond and Share* case the stays here would have inflicted upon these plaintiffs an inexcusable delay and enormous injury, leaving them with their cases only at the threshold of the court and years of litigation still confronting them.

Second. The Bond and Share companies may, before the *Bond and Share* case reaches this Court, decide to register under the Act or so to reorganize their affairs as no longer to be subject to it. In that event, of course, the *Bond and Share* case would never be decided by this Court

and the stay would have caused the plaintiffs immense and irreparable damages.

The Government's brief in the *Bond and Share* case *stresses the possibility of a variety of events which would thus dispose of the case.* This is in connection with the Government's argument (of which more hereafter) that the question whether a holding company may constitutionally be required to register must be determined solely on the provisions of the Act with respect to registration—*i.e.*, wholly without regard to the regulatory provisions with respect to registered companies. Some of these possibilities are thus described in the Government's brief:

> "The crux of the matter is that the defendants do not now say, and certainly this Court cannot predict, what acts they or their subsidiaries will perform if and when the defendants are required to register. This is true not simply as to security offerings and acquisitions, but it is true as to all activities of the defendants and their subsidiaries. Since the filing of the plaintiff's bill, two of the intervening non-exempt holding-company defendants —Idaho Power Company and The Montana Power Company—have acquired all of the properties of their utility subsidiaries and have ceased to be holding companies, thereby altering radically their conjectural future obligations under the Act (S. 266, 343). Somewhat earlier, but after the Act had become law, the defendants purported to make extensive adjustments to eliminate interlocking directorates and to reorganize their service arrangements (S. 327-331, 352-357).
>
> "Who can say that the defendants will not have made even more drastic and radical changes in the conduct of their affairs by the time they actually register? Certainly the defendants have made no

such assertion. *Defendants' future action may be dictated by a multitude of considerations wholly unrelated to the validity or invalidity of this Act. The tax policy of the federal government, the tax policy of the states, the administrative policies pursued by the plaintiff commission and by state regulatory commissions, the trend of public sentiment, these and many other factors may each vitally affect the future plans and affairs of the defendants.* They may decide, for example, to make Ebasco, their newly created service subsidiary, completely independent of the control of the Electric Bond and Share Company. Or they may decide to have Ebasco perform its services at cost, as defendant American Gas professes to do (S. 459-461) and as Ebasco's charter permits it to do (S. 870). *They may attempt to regroup their subsidiaries into independent regional systems."* (Brief on Scope of Issues, pp. 55-56.)

Again:

"Even a company of the size and scope of Bond and Share may avoid the necessity of divesting itself of any of its assets by becoming a true investment company and giving up its control over operating utility companies." (Brief on Scope of Issues, p. 57).

Again:

"While they deny the validity of the Act, the defendants have already taken some steps in the direction of compliance; it is impossible to say what further steps they make take before the Supreme Court finally adjudicates the issues involved in this proceeding. If required to register, the defendants may be able to abide by the alternative of not engaging in any of the activities prescribed in section 4(a). If

> the defendants find that their activities require them to register, they may fairly seek time to adjust their affairs before having this Court pass upon the application to them of provisions affecting registered companies." (Brief on Scope of Issues, p. 66.)

Third. By motion to dismiss the counterclaims and cross-bills of the *Bond and Share* defendants, the Government has asserted that evidence, to which over 78 pages of the stipulation and exhibits are devoted, shows that those defendants are equitably estopped from asserting that they may not constitutionally be required to register. A section of the Government's brief is devoted to this proposition, which is stated as follows:

> "The defendants are especially without equity in asking this Court to consider their cross-bill before they have registered and complied with the law. Through their representatives, defendants appeared before the committees of the Congress when the Act was under consideration and, although they opposed the passage of the Act as introduced and in its final form, insisted before the Congress that they were in favor of federal regulation of utility holding companies.
>
> * * *
>
> "* * * the representations they have made to the Congress * * * mark the defendants as signally deficient in that equity which a court requires of suppliants for equitable relief." (Brief on Scope of Issues, pp. 122, 124-125.)

If these contentions by the Government are accepted by the Court and the Bond and Share defendants are held, because of representations they have made to the Congress, to be equitably estopped from asserting that they

may not constitutionally be required to register, there would of course be no decision by this Court decisive in any way on the constitutional questions raised by the plaintiffs' bills. It is no answer for the defendants to say that similar acts of estoppel *might* be proved against these plaintiffs. There certainly is no *presumption* that these plaintiffs are estopped. *The plaintiffs do not know what representations Bond and Share may have made to the Congress, but they do know that they themselves have made no representations which would estop them from asserting the unconstitutionality of the Act.*

The Court will readily see that in each of the contingencies so far discussed there will have been a final disposition of the *Bond and Share* case, after the stay has run for a year and a half at least, which will not even have touched —to say nothing of "clarifying"—a single issue tendered by the plaintiffs' bills.

Fourth. The nature of the business done by holding companies is not the only relevant factor in determining the constitutionality of the Act. The nature and extent of the cost of compliance with the Act, and the other damages and difficulties which will result from compliance with it, are also relevant factors; and the plaintiffs' bills therefore challenge the Act as in violation of the Fifth Amendment to the Constitution, as well as asserting that, as to the plaintiffs, it is not within the powers granted to the Congress by the Commerce Clause. In other words, the allegations of damages in the plaintiffs' bills are material as well *on the question of the constitutionality of the Act as applied to them*, as on the question of equitable jurisdiction,—namely, whether the bills show a right to affirmative injunctive relief against

registration. The Government's brief in the *Bond and Share* case argues at length that the Bond and Share defendants *have proved no damages.* It is stated:

> "* * * it is also clear that there is not the slightest proof in the record that the defendants have been damaged, irreparably or otherwise by the Act or by any action or threat of action by the plaintiff or by any cross-defendant. * * * *The defendants have failed to submit a scintilla of proof* that they are now exposed, or that they will be exposed when they become registered companies, to any damage, irreparable or otherwise, by reason of any provision of the Act." (Brief on Scope of Issues, p. 125.)

It is obvious, therefore, that, if the evidence in the *Bond and Share* case sustains the above conclusion of fact which the Government draws from it, the *Bond and Share* case will go up on a record which, as concerns the plaintiffs at bar, will differ in a vital and possibly determinative respect from the record which the plaintiffs will make. For it must, of course, be assumed for the purpose of this case in its present aspect, that the facts as to the injuries suffered by these plaintiffs are correctly alleged in their bills.

Fifth. We are sure that counsel for the plaintiffs will not deny that one of the most strenuously argued positions taken by the Government in its briefs in the *Bond and Share* case is that the question of the constitutional right to require holding companies to register under the Act must be determined *solely* from the provisions of the Act as to *unregistered* companies—the provisions requiring registration and imposing penalties for not registering,—*i.e.,* without reference to any of the provisions with respect to com-

panies once they have registered. Pages 12 to 118 of the Government's Brief on the Constitutionality of the Registration Provisions of the Act is devoted to an elaborate argument of this proposition. The bills of the plaintiffs at bar take the diametrically opposite position,—namely, that the constitutionality or unconstitutionality of the regulatory provisions of the Act have a vital bearing on the question of the constitutionality of the requirement of registration.*

If, then, the trial court in the *Bond and Share* case should accept this position of the Government as sound and on that basis make a decree requiring the Bond and Share defendants to register, but if this Court should disagree—holding the provisions of the Act with respect to registered companies to be relevant on the question of the constitutionality of requiring registration,—we do not see how it can be said now that in such an event the record before this Court on the *Bond and Share* appeal would certainly be in such a form that the decision of this Court would not require remanding the case for further proceedings in the district court. For it would appear to be entirely likely that in such an event this Court would consider that, before it could properly make a final decision in the case, additional findings would have to be made by the trial court in connection with the matters which its decision thus made relevant. Thus the stay would leave the plaintiffs' bills unanswered until after two trials of the *Bond and Share* case in the trial court and two appeals to this Court. These plaintiffs would escape that enforced and injurious delay by a prompt trial and proper disposition of their own cases in the trial court.

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*This is also true of the counterclaims and cross-bills of the *Bond and Share* defendants.

It is difficult to conceive of positions more strikingly inconsistent than those which the defendants have taken at various times as to the scope of the *Bond and Share* case.

In their petition to this Court for writs of certiorari in the cases at bar, the defendants refer to the *Bond and Share* suits and to the suppositious decision by this Court in that case, and state that:

> "Certainly none of the suits sought to be stayed would afford as broad, as comprehensive, or as certain a decision as to the validity of the Act as the Bond and Share suits" (p. 11).

They also state, with reference to the *Bond and Share* case:

> "Furthermore, no fairer or broader test of the Act can be suggested."

In the "Statement of the United States of America as Amicus Curiae," opposing the petition for writs of certiorari to the Circuit Court of Appeals for the Fourth Circuit in the case of *Burco, Inc.* v. *Whitworth et al.*, 81 F. (2d) 721 (C. C. A. 4th, 1936), cert. denied 297 U. S. 724, the Government states that the *Bond and Share* cases,

> "far broader in their coverage of the problems of the industry than this restricted proceeding, will offer a truly adequate case to test the constitutionality of the Act in a proceeding in which the Government has had an opportunity to share and that the decision would apply to typical holding company situations, which Congress had in mind at its enactment."

Regardless of the intentions of the Government in making these statements, there can be little question but that the

impression thus created is that the Bond and Share cases will afford a broad and comprehensive test of the constitutionality of the Act. Such statements are in strikng contrast to the vigorous and uncompromising position which the Government is taking in the Bond and Share case, in seeking to limit the issues therein to the single question of the constitutionality of the provision of the Act requiring public utility holding companies to register with the Commission. In their brief in the *Bond and Share* case the defendants state:

> *"The case now before this Court raises the single question of the validity of sections 4 (a) and 5 as applied to these defendants; it cannot raise an imaginary controversy over the hypothetical application of some other provision of the Act to these or some other holding companies.* How far parts of the Act may be sustained if other—not the subject of any controversy in this case—fail, are matters upon which this Court 'need not speculate now.'" (Brief on Scope of Issues, p. 39.)

They further state:

> *"In seeking to enforce one particular provision of a long and complicated statute,* the Government cannot be deemed either as a matter of fact or of law to have consented to be sued for the purpose of determining the validity of other provisions of the statute." (Brief on Scope of Issues, p. 118.)

Sixth. The defendants' brief at bar seems quite clearly to assert the proposition that *the character of the business and activities of any particular holding company or of its subsidiaries is wholly immaterial on the question of whether it can constitutionally be required to register, provided only the company is within the definition of Section 2 (a) (7).*

While the Government's briefs in the *Bond and Share* case do not devote any section or subdivision to the explicit statement and argument of this proposition, nevertheless we believe we will not be contradicted when we say that these briefs do show that the Government does assert the above to be the law, even though the Government may not feel that it is necessary to raise or press the point in that case in order to obtain a decree in its favor.

Accordingly, it seems clear that (exactly as in the case of the Government's contention in the *Bond and Share* case, stated above under "*Fifth*") it cannot now be certainly stated that the assertion of this proposition of law by the Government in the *Bond and Share* case may not result in a reversal of the decree of the district court *and a remandment for further proceedings therein: i.e.*, in the event that the trial judge accepts this contention of the Government as good law, confines his findings of fact accordingly, and that this Court, on the appeal, disagrees with him. Such an outcome, if the plaintiffs' suits are stayed, would prolong the delay in the trial of the plaintiffs' suits for an additional indefinite period.

Moreover, if this position of the Government is correct, then they have conclusively demonstrated that they do not need the stay which they here seek. Their constitutional arguments could be fully presented to the courts upon a motion to dismiss the plaintiffs' bills, with absolutely no trial on the facts. The plaintiffs have alleged in their bills all facts necessary to bring them within the Act and motions to dismiss the bills would have raised the question squarely.

As a matter of fact, a motion to dismiss, in *only one* of the stayed cases would for practical purposes have

been quite sufficient; for the motion would have raised a pure question of law *undeniably common to all of them,* and, if decided in favor of the Government, *decisive* of all of them. If such a motion had been promptly made, the decision on it would today probably be *at least* well on its way to decision by this Court. And yet the defendants have not even sought this easy, inexpensive, and prompt way of finally disposing (if they are right in their view of the law in this respect) of every one of the stayed cases,—*even though the presentation of the question would have consisted merely of putting into a brief in one of the stayed cases the arguments and authorities which Government counsel have no doubt long since prepared and collected for presenting it.* The plaintiffs' bills, of course, could only *tender* this issue of law.

And of course, if the defendants are correct in their assertion that the character of the business and activities of any particular holding company or its subsidiaries is immaterial on the question of whether it can constitutionally be required to register, so long as it is a holding company within the definition of Section 2(a)(7), then how can they envisage that the trial of plaintiffs' cases *on the facts* would require six months; that the preparation for trial for plaintiffs' suits would be "comparable in magnitude to an important anti-trust case" (dfts.' br. p. 90); that "a proper presentation of facts" in plaintiffs' cases "would require months of investigation"; that "it would probably take six months to complete a record in either of these [plaintiffs] suits comparable to the record built in the Bond and Share suits, upon which the Government has had a corps of men working for nearly a half year"! (dfts.' br. pp. 91-92).

Seventh. Lastly, we come to the alleged similarity of the issues between the plaintiffs' cases and the *Bond and Share* case based on the alleged similarity of the character of the *business done* respectively by the plaintiffs and the Bond and Share Company and their subsidiaries—or, as the defendants' brief now more particularly asserts (see *supra*, p. 54, footnote), on the asserted practical identity of the business done *by the plaintiffs' subsidiary operating companies* with that done by subsidiary operating companies of two particular *subsidiary holding companies* of Bond and Share which are also defendants in the *Bond and Share* case. For, as we have already pointed out, we believe that the defendants' brief now tacitly concedes that the record as to "similarity" of business on which the trial court granted the stays—the plaintiffs' bills and the Government's original bill in the *Bond and Share* case—does not establish a sufficient "similarity" of issues to justify the stay, even on the defendants' theory that similarity of issues may justify stays such as this.*

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*Should the Court wish to compare merely the *bills* in the plaintiffs' cases with the Government's amended bill in the *Bond and Share* case, the following comparison is submitted

The Commission's bill in the *Bond and Share* case alleges that that company is the top holding company of a utility system operating in some thirty-two different states, many of which are inter-connected through interstate transmission facilities and that a substantial portion of these utility companies are engaged regularly in the interstate transmission and sale of electric energy and gas (R. 50-51, 58-61). It alleges further that Bond and Share and one of its principal subsidiary holding companies, its co-defendant, American Gas and Electric Company, so *dominate and control* all of their subsidiary companies engaged in such interstate transmission and sale of electricity and gas that *Bond and Share, and American Gas, are themselves, in their own corporate capacity, engaged in the transmission and sale in interstate commerce of electric energy and gas* (R. 58-64).

It further alleges that Bond and Share, through its wholly owned and completely dominated subsidiaries, Ebasco Services, Incorpo-

Although, as shown above (*supra, "Sixth"*), the Government is making the contention that *any* holding company within the definition of Section 2(a)(7) of the Act may constitutionally be required to register, nevertheless we do not think that counsel will deny, *first*, that the Government (at least in its briefs in the *Bond and Share* case) has not argued this contention with any great zeal, and that these briefs do (to put it very mildly) recognize the possibility of a holding by this Court that some holding companies within the definition of Section 2(a)(7) may and some may not constitutionally be required to register; or will deny *second*, that the Government's contention is that the principal (if not the only) test of constitutionality

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rated, and Phoenix Engineering Corporation, has negotiated, entered into and is performing service contracts with operating subsidiaries of certain holding company subsidiaries of Bond and Share (R. 64-77). The great detail with which these service contracts and their subject matter is alleged, and the allegations that their performance amounts to a constant and regular traffic in interstate commerce by Bond and Share, show clearly that the Commission regards these facts as the facts *par excellence*, which will bring Bond and Share within the constitutional pale of the Act, if nothing else will.

The bills of complaint of both plaintiffs, on the other hand, show that neither is engaged in activities in any way comparable to those alleged by the Commission against the Bond and Share companies.

The bill of each plaintiff alleges that it is not engaged in the business of selling or transporting or causing to be sent or transported goods or commodities in interstate commerce, and that such use as it makes of the mails or the instrumentalities of interstate commerce is merely incidental to the conduct of its intrastate business (R. 5; AWW. R. 6).

The American Water Works bill shows that but little more than half of its capital assets consists directly or indirectly of investments in "public-utility companies" as that term is defined in the Act, approximately 40% of its total capital assets being represented by direct ownership of securities of water works companies. Substantially all of the remainder of its capital assets are represented by direct ownership of over 95% of the outstanding voting securities and certain other securities of a single holding company, The West Penn Electric Company, the great majority of the assets of which consist

in this respect is the nature of the business done by each holding company,—*including* in the expression "nature of the business done" the business done by its subsidiary operating companies *and the extent to which the business of these operating subsidiaries is* ACTUALLY MANAGED AND DIRECTED BY THE PARENT CORPORATION, as distinguished from being potentially controlled by stock ownership. *The Government has filed a separate brief of 149 pages which is exclusively devoted to establishing the single proposition that the "business", as above defined, of the Bond and Share Company affords constitutional warrant for requiring it to register under the Act.*

Now, the striking thing about this brief of the Government dealing with the facts as to the Bond and Share Company and its subsidiaries is that it deals with

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of substantially all of the common stock of two electric utility companies, which with their electric utility subsidiaries operate in a single area falling within adjacent parts of five States (AWW. R. 4).

The North American bill shows that the public utility subsidiaries of that company comprise in the main, electric properties, with some small amount of gas and transportation properties, centered primarily in certain large urban communities; and that its subsidiary companies which do own and operate facilities for transmission of electric energy in interstate commerce engage in such activities as an incidental part of the predominantly intrastate business of the integrated systems to which they belong (R. 3).

Moreover, as contrasted with the extensive and comprehensive services which the Commission's bill alleges that Bond and Share Company and American Gas and Electric Company render to their utility subsidiaries, *the North American bill shows that company not to be a party to any construction, sale or service contracts, and that it renders no such services to its subsidiary companies* (R. 5), and the American Water Works bill shows that that company is not engaged in activities in any way comparable to those in which it is alleged Bond and Share are engaged.

The extreme importance which the Commission attaches to the above-mentioned allegations of its bill against Bond and Share is manifested by the fact that a major part of the bill is devoted to such allegations.

these facts first and foremost and almost exclusively, not as facts concerning the different separate defendant companies the compulsory registration of which is sought, but as facts concerning the Bond and Share Company *itself* as the head of the system. Little is said in it about the business of any subsidiary company in the Bond and Share system (whether it be a direct or an intermedate subsidiary, or itself a holding or an operating company, or partly both) *as the business of that particular company, considered as an independent objectant to registration apart from its relation to Bond and Share itself.* It is throughout virtually assumed that *if Bond and Share must register,* so must the other defendants in the case, compulsory registration of which is sought. *Not a single section of the brief is devoted to discussing the question whether a single subsidiary holding company of Bond and Share could constitutionally be required to register* IF IT WERE NOT A SUBSIDIARY OF BOND AND SHARE.

In short, the brief, like the bill of complaint, deals with every subsidiary holding-company defendant in the *Bond and Share* case first and foremost and almost exclusively *as a subsidiary of Bond and Share itself.* This is as true of the two holding-company subsidiaries of Bond and Share which the defendants' brief now singles out as almost identical with the plaintiffs at bar in respect of the business carried on by their subsidiary *operating* companies, part of whose business may be said to be interstate commerce, as it is of the other subsidiary holding-company defendants in the *Bond and Share* case.

What, then, is the reason for this almost exclusively group treatment or, as it might be called, "clan" treatment, of the facts as to the Bond and Share companies in the

Government's bill and briefs in the *Bond and Share* case? The reason (as might indeed be easily guessed) is clear. It is that the Government's prime and unremittingly pursued purpose is to show that Bond and Share is *itself directly engaged* in interstate commerce precisely because the Bond and Share companies constitute a tribal clan of the good old-fashioned sort from every member of which to the remotest degree of consanguinity the head of the clan may and does autocratically exact prompt and unquestioned obedience, and that *because of this fact* Bond and Share can constitutionally be required to register (R. 58-64, 65-77). Throughout the brief, and in every conceivable connection, the stipulated facts are marshalled by the Government in an effort to show that the actual immediate direction and management of the business and policies of the Bond and Share operating subsidiaries engaged in interstate commerce is to such an extent that of the management of Bond and Share itself as to justify, for the purposes of the Act, a "piercing of the corporate veil". In short, the principal allegations in their bill, and the main argument of their briefs, in the *Bond and Share* case is that, however it may be in the case of holding companies which merely use their stock ownership in subsidiaries to elect directors who will represent their interests, Bond and Share in so many ways short-circuits any such management by Bond-and-Share-elected directors, as to justify a finding that Bond and Share *itself* is doing the interstate commerce of its operating subsidiaries. This argument of the Government is thus summarized in its briefs. (Factual Brief, pp. 73, 77.)

> *"In a word, Bond and Share provided the eyes through which the holding defendants saw, the ears*

through which they heard, the brain with which they planned, and the arms through which they acted."

* * *

"The holding defendants must accept and act upon the judgment of the service organization of Bond and Share in the administration of their investments in their subsidiary companies. * * *"*

The plaintiffs' bills on the other hand negative in the clearest possible way any relations such as the above between the plaintiffs' and their respective operating subsidiaries. They show clearly that the plaintiffs' operating subsidiaries are in every sense of the word self-governed and self-directed companies, despite the plaintiffs' ownership (direct or indirect) of their stocks, even where such ownership may be majority ownership.

The one other argument upon which the defendants rely in seeking to obtain a decision that Bond and Share may constitutionally be required to register is that because of and through its "interstate" services the Bond and Share system constitutes one "interstate empire" and that "the members of the Bond and Share system are but units of a single organization under common management and control". The defendants contend that the services rendered the operating subsidiaries in the Bond and Share system by the Bond and Share service organization, Ebasco, Inc., and American Gas constitute interstate commerce to a sufficient extent to subject the entire Bond and Share system to federal control and regulation (R. 64-77).

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*The specific fact allegations upon which the Government relies in these arguments are set forth at length in their bill of complaint (R. 58-77) and in their Factual Brief (pp. 20, 25-26, 35-36, 40-41, 46-47).

In their briefs in the *Bond and Share* case they state:

> "It is inconceivable that the supervision and advice provided by Ebasco and American Gas are any the less interstate commerce than the correspondence courses of instruction conducted by the International Text Book Company." (Brief on Constitutionality of Registration Provisions, p. 184.)

and further that

> "The conclusion is inevitable that services such as those performed by Ebasco and its wholly owned subsidiary Phoenix as well as those performed by American Gas are themselves interstate commerce. Such services are regularly and systematically performed as part of a continuous course of business. Such services not only constitute doing business in interstate commerce, in the most technical sense, but they constitute a business in interstate commerce most far-reaching in its effect and influence upon the course of interstate trade and commerce." (Brief on Constitutionality of Registration Provisions, pp. 207-208.)

and further:

> "If these various services of Ebasco and Bond and Share involving the direction of purchases and shipments of goods in interstate commerce aggregating several millions of dollars per annum and involving the sale of intangible services, information, and reports, for fees and charges running into hundreds of thousands and even millions of dollars a year, do not constitute interstate commerce, then interstate commerce is an artificial conception having no relation to the practical facts of business. Such a conception of interstate commerce has no basis in fact or in constitutional law." (Factual Brief, p. 139.)

They state in conclusion in their argument on the interstate character of the service business of Ebasco and American Gas that "as a matter of fact *it is difficult to imagine a business more completely interstate than the service business of Ebasco and American Gas.*" (Factual Brief, p. 135).

Contrasted with this alleged interstate business within the Bond and Share system, The North American Company's bill shows that it renders no services of any nature whatsoever to its subsidiary companies (R. 5) and the American Water Works' bill shows that it renders services in no way comparable to those attributed by the Government to the Bond and Share companies.

Let us return, then, to what, as above stated, appears now to be the defendants' sole remaining basis for their assertion of any really striking similarity between the business of the plaintiffs and the business of any of the *Bond and Share* defendants,—the resemblance, namely, between the interstate business done respectively (a) by some of the defendants' operating subsidiaries, and (b) by the operating subsidiaries of two of the holding-company subsidiaries of Bond and Share.*

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*The defendants' brief (see pp. 10, 88) complains that none of the subsidiaries of either plaintiff are joined as parties plaintiff to the plaintiffs' bills, and it refers to the two suits (one by a subsidiary of each plaintiff) commenced in the Delaware and in the Maryland district courts. It is clear, however, that the joinder of the plaintiffs' subsidiaries as parties to the plaintiffs' suits is not in the least necessary to enable the defendants to prove any facts that they may wish to prove with respect to the relations between the plaintiffs and their subsidiaries. Moreover, as we have clearly stated in our briefs in both courts below, the plaintiffs will bring these two subsidiaries into their own cases as parties plaintiffs if the defendants wish them to. They will also bring in any other of their subsidiaries. There is therefore no justification for the defendants' above complaint.

We submit respectfully that it is plain from the foregoing that, from the point of view of the central and dominating argument of the Government in the Bond and Share case in support of the constitutionality of the Act as against the Bond and Share defendants, even absolute identity between the business done by any operating subsidiary of either of the defendants at bar and the business done by the operating subsidiaries of the two holding-company Bond and Share subsidiaries in question, is wholly irrelevant. For, from the point of view of this argument of the Government, the vital and controlling similarity obviously is, not any similarity between the business done by the operating subsidiaries of two holding companies, but the similarity between the nature and extent of the control exercised over their respective operating subsidiaries by the two holding companies. This necessarily follows from the fact that the argument is that a holding company is engaged in interstate commerce (and therefore constitutionally within the Act), not because operating companies of whose stock it happens to own so-and-so many shares are so engaged, but because the actual relations between it and these subsidiaries are such that their acts must be regarded as its acts.

The Government's brief in the *Bond and Share* case clearly shows that the similarity of issues which the defendants must establish in the cases at bar in order to justify their stays (assuming again for the purpose of argument that the stays *can* be justified by similarity of issues) is similarity *of the facts as to active dominance and direction and servicing of operating subsidiaries by a non-registering non-operating holding company.*

It is clear, therefore, that even a decision by this Court of the *Bond and Share* case *on the merits* in favor of the Government on the theory asserted in the Government's brief on the facts will not constitute a decision of it on an issue of fact which has been shown to be *similar to any issue yet raised or suggested in the plaintiffs' cases.** Such a decision, like the decisions discussed in other subdivisions of this Section, would leave the ultimate decision of the plaintiffs' cases, their bills being still unanswered, as uncertain as on the day when the motion for the stay was made.

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*With reference to the statements concerning the plaintiff, The North American Company, on page 57 of the defendants' brief, under the heading "Service Contracts", we wish to state that North American Light and Power Company is not a "wholly owned subsidiary" of The North American Company. North American owns a majority of the voting stock of North American Light and Power but substantial amounts of that company's voting stock and other securities are owned by others. Also North American Light and Power does not either directly or indirectly engage in the performance of any services for its subsidiary companies or for any other companies.

The defendants' brief (p. 91) criticises as misleading the allegation in the North American bill that "none of the public utility companies or holding companies or other companies *in which the plaintiff owns any stock* engages in or employs any of its properties in the generation, transmission or distribution of electric energy in interstate commerce". The criticism is that this allegation is intended to give "the impression that no company anywhere in the North American system under the control of The North American Company is so engaged in interstate commerce". We submit that no competent lawyer reading the complaint could possibly believe that the words "companies in which plaintiff owns any stock" were intended to mean more than what they plainly say. But over and beyond this, if counsel who wrote this portion of the defendants' brief had seen fit to read the North American bill carefully he would have found that it specifically alleges that "* * * plaintiff, in the exercise of its lawful corporate powers, controls securities of certain 'subsidiary companies' which, as incidental to their business, own and operate utility assets for the transmission of electric energy in interstate commerce * * *" (R. 20).

CONCLUSION

Without imputing bad faith to the defendants, we submit that their attempt by these stays to preempt the entire field of litigation over the Act pending the final decision of their own *Bond and Share* case raises a question that goes much deeper than the question of the good faith of any litigant in selecting one adversary from among many and in determining when and in what court to litigate with him.

It is beyond the ability of any litigant to discriminate the issues in or foresee the eventualities of all the different legal contests in an arena so vast as that in which the defendants are now engaged against the utility companies. In each of these contests the decision may mean life or death to one or more of these companies, and delay in the decision of the case of each will mean serious loss and injury to it. When all is said and done, the defendants in asking for their stays are asserting more than a right merely to decide which one of their adversaries shall first be privileged to contest with them to final determination the momentous constitutional questions involved in these cases. For, in asserting that right they are also asserting both the right to keep their other adversaries voiceless with respect to the issues which may be common to all of these suits, and the right to subject them, for an indefinitely long period, to the injuries which they will suffer from their inability to obtain prompt adjudications of the issues peculiar to their own situations.

We believe that the privilege which these defendants have been permitted to exercise in obtaining these stays is a privilege which approaches too closely the right of sitting in judgment in one's own cause to permit of its being

accorded to any litigant, however honest and well intentioned, not even to the officers and agents of government.

We submit that in this respect as in every other Judge van Orsdell was right when he stated in his opinion: "The Government of the United States as a litigant has no greater rights than the humblest citizen." We submit that the defendants' stays are in clear violation of the spirit of a democracy such as ours.

Respectfully submitted,

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APPENDIX A

The Authorities Show Unanimously That the Stay Constitutes a Grave Abuse of Discretion

Mercantile Trust Co. v. *Lamoille Val. R. Co.*, Fed. Cas. No. 9432 (C. C. Vt. 1879). Although there were also demurrers and pleas in abatement, the relevant question in this case arose on a motion for a stay until a suit in the State court *"should be completed"*. The plaintiff in the Federal court was the owner of bonds of the defendant railroad. He sued on behalf of himself and the other bondholders to foreclose the mortgage securing the bonds, and to remove the mortgage trustees, who of course were made defendants. He alleged that one of the trustees was *also* the sole trustee under a prior alleged preference mortgage, which was being foreclosed in the State court. In the State foreclosure suit there was also a cross bill by this trustee under the preference mortgage to foreclose it, *and the plaintiff in the Federal court had been named as a party defendant to this cross bill,* and had been served with process outside the State (which service was therefore held invalid) before service in the Federal suit. *Manifestly the plaintiffs in the State suit desired to have the plaintiff in the Federal court a party defendant in the State court, and therefore this plaintiff could have appeared voluntarily as a defendant in the State court had he chosen to do so, and could have litigated to prompt adjudication in that court the identical questions which he had chosen to litigate in the Federal court.* Nevertheless, the Federal court refused to grant the stay, "and thereby compel the plaintiff to become a party there, if not already one, and to proceed there instead of here", and to suffer an indefinite

delay in the prosecution of his Federal court suit. The court said (p. 26):

> "*But, courts have not the right to disown their jurisdiction.* It is their duty to hear and determine causes properly brought before them, and to determine whether they are properly so brought, if such question arises, and not to advise or compel the parties to go elsewhere for relief, *even though it should appear that the relief might better be obtained elsewhere.* In Magna Charta, c. 29, it was declared by the king, for his courts: '*Nulli vendemus, nulli negabimus, aut differemus, rectam, vel justitiam.*' This is fundamental to the duties of courts. The duty cannot be fulfilled by sending parties elsewhere for what they have a right to here, *nor by compelling them to wait until some other time for what they have a right to now.* If the plaintiff has a right to prosecute this suit in this court, it has, also, the right to have it proceeded with according to the course of the court, and, as question is made as to whether it has the right to so proceed, it has the right to have that question heard and determined, as may appear to be right, also. There was no proper course but to hear the parties upon the questions raised, and there is no proper way now but to pass upon them."

It will be observed that the motion was denied in this case despite

> (a) the fact that the moving party *was willing and was seeking to make his adversary a party to the other suit,* which, moreover, had been commenced first, and
>
> (b) the fact that if that adversary had consented to be brought into the other suit, he could have

promptly litigated in it the *identical* issues which he was seeking to litigate in the court where he had brought his own suit.

Wadleigh v. *Veazie,* Fed. Cas. No. 17,031 (C. C. Me. 1838). Here there was a common-law plea in abatement, based on the prior pendency of an action between the same parties in the State court. The two actions were for the recovery of the same land. The issues in the two cases, though similar, were not identical. The defendant in the Federal court (who interposed the plea in abatement) *was, however, the plaintiff in the State court* and therefore under the common-law rule the court (Story, *J.*) held the plea bad. Having thus disposed of the plea as a strict common-law plea in abatement, the court, however, *then went on to treat it on a broader basis* as seeking *to invoke some general discretionary power* of the court in the matter of granting delays. *In other words, he treated it as a motion for a "stay".* On this aspect of the case the court said (p. 1320):

> "But it is suggested, that this court possesses a sort of *discretionary authority* in cases of this sort, where there is a concurrent jurisdiction in the state court and in this court, to interfere to prevent a collision of jurisdictions and *a conflict of decisions* as to the title to the land. I know of no such authority. If the parties are rightfully before this court in a case within its jurisdiction, however unpleasant it may be to entertain a suit here, in regard to which there may possibly be a diversity both of verdict and judgment from those given in the state court, I know not how that is to be avoided. I should deeply regret such an occurrence; but still I am not aware, how the court can escape from its duty, in any case, which congress has confided to its jurisdiction. If a plain-

> tiff should bring an ejectment in a state court, and should recover and be put into possession, and then the defendant, being a citizen of another state, should bring an ejectment in the circuit court of the United States, in the same state, to recover back possession of the land, *I know of no power in the circuit court to stay,* or control the suit, or to refuse jurisdiction over the cause."

These remarks have additional force as coming from so eminent an authority as Mr. Justice Story.

Loring v. *Marsh,* Fed. Cas. No. 8514 (C. C. Mass. 1864). The plaintiff filed a bill in equity to compel an accounting by the trustee under a will. Defendants moved for a continuance *pending the determination of a prior suit in equity brought in the State court and already pending on appeal in the Supreme Court of the State.* The plaintiff against whom the stay was sought was a party defendant in the State court. Denying the motion the court said (p. 901):

> "The theory of the motion is that the construction of the will and devise referred to in the motion depend upon the local law, and that the cause should be continued until the state court shall determine what is the true intent and meaning of the local law upon that subject, and not that there is any conflict of jurisdiction, arising out of the fact that the bill of interpleader was filed in the state court two days before the bill of complaint was filed in this court.
>
> * * *
>
> "Looking at the whole case, it is clear that there are questions presented in this record which are not involved in the record in the state court, and which cannot be decided there under the pleadings exhibited

> in this case. On the other hand, it is equally clear that there is a question common to both cases, and that that question is one which has not been directly decided by the state court, and that it depends upon the construction of the local law. Taking the case as stated, the question is, what is the proper course to be pursued? * * * *Pending controversies, whether at law or in equity, are subject to many contingencies by which they may be retarded or prevented from being prosecuted to judgment, and yet the argument is that the cause must be continued indefinitely, until the question depending upon the local law is determined by the state court.* The industry of counsel, however, has not furnished the court with any decided case which supports any such proposition, and the researches of the court in that behalf have not been attended with any better success."

We thus have a Federal court refusing to grant a stay until the final determination of a case already pending on appeal in the highest court of the State, the decision of which court on a material issue in the Federal suit would be binding on the Federal court, although the party sought to be stayed was a party to the other case.

Checker Cab Mfg. Co. v. *Checker Taxi Co.*, 26 F. (2d) 752 (D. C. N. D. Ill. 1928). This was a suit in equity to recover profits under a contract. At the time the bill was filed there was pending in the State court a bill of review brought by the defendant in the Federal suit, seeking to correct a decree in a still earlier suit between the same parties which was based on the same contract involved in the suit sought to be stayed. After the commencement of the suit sought to be stayed the defendant in it filed in the State court an amended and supplemental bill seeking the

same relief sought in the original bill and, in addition, praying that the contract be cancelled for fraud. This defendant then asked the Federal court to stay proceedings until its suit in the State court had been adjudicated.

The Court said (p. 752):

> *"The sole question is whether the court has the discretion to stay the proceedings here* until the determination of the suit in the state court. Plaintiff obtains jurisdiction by reason of diversity of citizenship. *Under the Constitution and laws of the United States it has an absolute right to try its case in this forum.* The pendency of the state court action is not a bar, and it would seem apparent that *this court may not exercise its discretion to deprive plaintiff of its constitutional right to a trial in this court.* * * *"*

National Motor Bearing Co., Inc. v. *Consolidated Motor Parts Co.*, 6 Fed. Supp. 811, 812 (E. D. N. Y. 1934). The plaintiff's bill was for an injunction and an accounting for alleged infringement of his patent by the defendant, a dealer. The plaintiff had instituted a prior suit for infringement against the manufacturer from whom the defendant dealer had bought. The defendant dealer moved for a stay pending the final adjudication of the suit against the manufacturer. His affidavit showed that the manufacturer's attorneys were representing him and that his expenses were being assumed by the manufacturer.

Here we have the case of *the same plaintiff* suing two different defendants in two cases involving identical issues, with the later-sued defendant asking for a stay on the ground that the first-sued defendant is (at least as be-

tween himself and the other defendant) primarily liable, and that he should therefore first defend the first commenced action. In short, *the party seeking the stay was willing to let the issues in his case be tried in an action to which he was not a party.* And yet the court denied the motion, saying:

> "No case has been cited by the defendant in which a dealer has been accorded a stay upon the theory that he ought not to be called upon to defend his own alleged infringement because the manufacturer is meeting the same issue in another forum."

Dunfee v. *Childs*, 53 S. E. 209, 59 W. Va. 225 (1906). The defendant in a suit in equity moved for a stay of proceedings pending the determination of an appeal to the Supreme Court of the State in another action concerning the title to the same realty involved in the suit sought to be stayed. The moving party was a party to the other suit. The motion was under a *statute* which provided that (p. 212):

> "whenever it shall be made to appear to a circuit court, or to the judge thereof in vacation, that a stay of proceedings in a case therein pending should be had, until the decision of some other action, suit or proceeding in the same or another court, such court or judge shall make an order staying proceedings therein upon such terms as may be prescribed by the order."

In affirming the denial of the stay the court pointed out that, as the statute did not lay down any criteria for the granting of stays, the question would have to be governed by common-law principles. The court said (p. 212):

> "The statute does not prescribe the conditions calling for a stay, *but any action under it must be governed by the common-law principles relating to the subject. A suitor's suit cannot be suspended merely because a legal question may be common to the two suits. He has a right to demand that the court shall decide such question, and not wait for its decision by another court.* The decision in the other suit must have legal effect in the suit in which the stay is asked, and close its litigation. *If it operate on only one of two litigated matters, it ought not to be granted, because it does not cover the whole case.*"

In several cases where trial courts have improperly granted stays, writs of *mandamus* or *prohibition* have issued directing them to proceed or not to interfere with the progress of the cause according to the calendar of the court.

In *Dalgarn* v. *New Orleans Land Co.*, 109 So. 345, 161 La. 653 (1926), after a jury was impanelled and the issues presented to the court and jury and the arguments of counsel heard, the court, on its own motion, discharged the jury and continued the case, pending the outcome of an appeal in another case involving the interpretation of a contract similar to the one involved in the case before him. The judge gave as his reason that he "could not conscientiously pass on the merits of the cause until certain facts which were at issue in suit No. 130101, now before the supreme court, were determined". Writs of mandamus and prohibition were granted to compel him to proceed with the trial. *In this case again the parties to both suits were the same.* The Appellate Court stated (p. 346):

> "It is clear to us that, while both of petitioner's suits against the New Orleans Land Company grew out of the same original contract, each suit presents an entirely different and distinct cause of action."

In *Jefferson Standard Life Ins. Co.* v. *Keeton*, 292 Fed. 53 (C. C. A. 4th 1923), plaintiff insurance company filed its bill in the Federal court for cancellation of an insurance policy. Thereafter, but before hearing, the beneficiary instituted an action at law upon the same policy, which was removed to the Federal court. The trial court refused to enjoin the prosecution of the law case. On the appeal from this order the insurance company called the attention of the court to "the clear intimation of the learned judge below that he proposes to postpone the hearing of the equity causes until after the determination of the actions at law". This the reviewing court said he could not do (p. 56):

> *"Nor has the equity judge any right to stay his hand until the actions at law have been tried. If the latter were still pending before another court, he could be compelled by mandamus, if necessary, to hear and determine the causes before him without waiting upon the proceedings of the other forum. McClellan* v. *Carland, supra; Barber Asphalt Co.* v. *Morris, supra.* They are now all before the court below and should stand for trial in the order in which they were instituted."

Here again the parties to both proceedings were the same.

Bergholm v. *Peoria Life Ins. Co.*, 63 S. W. (2d) 1064 (Texas 1933), arose on a petition for mandamus to compel the trial court to proceed with the trial of a suit upon an insurance policy. The insurance company had already

brought a suit in the Federal court to cancel the policy. The company therefore moved *for a continuance of the State action pending determination of the Federal suit in equity.** The trial court granted a continuance *until the determination of the Federal suit or until the second following term of the State court, whichever should come first.* The trial court had said (p. 1064):

> "'From such hearing the court finds that to continue this cause until the term of this court beginning in January, 1934, will *expedite the trial of this cause and the final disposition thereon;* that such a continuance *will avoid confusion in this court;* that it will be more expeditious to continue the trial of this cause until said time; that such a continuance *will make it probable and possible that a more complete record may be had on the trial of this cause;* that such a continuance will more nearly serve the best interests of the parties to this suit and of this court in the trial of this cause; * * *'"

Granting the mandamus directing the trial court to permit the relator to proceed with her trial "agreeable to the principles and usages of the law", the Court of Civil Appeals said (p. 1065):

> "The effect of the trial court's order quoted above, as we construe the record, was to continue the case for two terms, thus suspending the right of relator to prosecute it. * * * It is plausibly argued that a trial court has discretion about continuances, particularly if the condition of his docket is such as to preclude the trial of certain cases, and that we could

*There was also a plea in abatement which, however, was bad, since the plaintiff in one suit was the defendant in the other. See *Wadleigh* v. *Veazie, supra,* p. iii.

> presume here that the court acted on his own motion. While we think the record is sufficient to rebut this presumption, we would not feel authorized to indulge such presumption in the face of an order which continues the case, not to the next term of court, but to the term after that. * * *"

The court then discussed certain *statutory* provisions: (1) that continuances shall be granted only for sufficient cause supported by affidavit,* (2) that every suit shall be tried when called, unless continued or postponed to a future day of the term, and (3) that it shall be no cause for postponement of a trial of the issues of law that the parties are not prepared to try the issues of fact. It is true that the court said: "We will not indulge the presumption that the trial court of his own motion suspended the prosecution * * * in such manner as to deny all parties their legal rights *under the statute*"; but the right of a litigant to proceed with the trial of his cause *subject to the convenience of the court's docket*, is a right which is recognized independently of statute. And the court further said:

> "If there could exist such an extreme state of facts that would justify a court in exercising his equity powers to continue a cause beyond the next ensuing term of court (a matter we do not decide), such showing should affirmatively be made to appear in the record. None such appears here."

Here we have a square holding that, *even where the parties and the issues in the two cases are identical*, so that a plea in abatement would be good except (a) for the fact that one case was in a Federal and one in a State court, and

*Similar to Equity Rule 51 of the Supreme Court of the District of Columbia.

(b) for the fact that the plaintiff in one case was the defendant in the other, *nevertheless it was an abuse of discretion to continue the later commenced case for only two terms.*

See also *Dunphy* v. *Belden*, 57 Cal. 427; *Cates* v. *Mayes*, 12 S. W. 51 (Supreme Ct. Texas 1889); *Farmers' Co-op. Gin Co.* v. *Harper*, 268 Pac. 256, 131 Okla. 224 (1928); *Wood* v. *Lake*, 13 Wisc. 84 (1860); and *Granger* v. *Judge of Wayne Circuit*, 27 Mich. 406 (1873).

In *Toplitz* v. *Miller*, 32 Fed. 744 (S. D. N. Y. 1887), *the plaintiff in several different cases* moved that all of the cases except the one first instituted be stayed pending the decision of the first case, *which was already pending in the Supreme Court.* Affidavits in opposition alleged that the issues in the cases sought to be stayed were different from those in the case in the Supreme Court. The motion was denied on the ground that doubt existed as to whether the issues in the cases were identical. The court said:

> "*This court will not try the subsidiary question whether the issues in these cases are identical with those in another case, upon affidavits, and in advance of the trial.* The facts upon which the motion is made being in dispute, no sufficient cause is shown for modifying the rule laid down on October 1, 1887, for the government of this calendar, namely, that cases must be tried when reached in their regular order according to date of issue and place on the calendar."

To substantially the same effect see:

Johnson v. *N. Y., O. & W. Ry. Co.*, 3 Fed. Supp. 80 (D. C. E. D. N. Y. 1931);

Kirkpatrick v. *Eastern Milling & Export Co.*, 135 Fed. 144 (C. C. D. N. J. 1904);
City of Detroit v. *Detroit City Ry. Co.*, 55 Fed. 569 (C. C. E. D. Mich. 1893);
Electric Vehicle Co. v. *Barney*, 143 Fed. 551 (C. C. S. D. N. Y. 1906).

In *Boynton* v. *Brown & Mathes*, 145 S. W. 242, 103 Ark. 513 (1912), it appeared that there had been conflicting claims to certain tracts of lands. An action by one claimant to quiet title was pending in the Federal court, and by another in the State court. The Federal action had evidently been commenced first, and reached decree first. That decree was taken as the basis for the Chancellor's finding against plaintiffs in the State action. Thereafter the Federal court's decree was reversed.

The attorneys for the plaintiffs in the State court suit then sued for their fees in connection with the trial of that case. The clients asserted as a defense the negligence of the attorneys in not obtaining a continuance of the State proceedings pending final disposition of the suit in the Federal court. The court held that the attorneys were not negligent, because (p. 245) "the pendency of the suit in the federal court against Haggart and McMasters was not a legal ground for a continuance".

This decision is significant, because the cases were so closely related that the decree in one was actually the basis for the decision of the second—and yet the court held that the second could not properly have been continued to await the final determination of the first.

In New York a long line of well considered decisions illustrates the principles hitherto discussed.

The New York Civil Practice Act, Section 167 (formerly Code of Civil Procedure, Section 805) provides:

> "Except as otherwise provided the court in which an action or proceeding is pending, or a judge of such court, in a proper case may grant a stay of proceedings upon such terms as to notice, security or otherwise, *as may be just.*"*

Since the statute leaves the words "a proper case" undefined, it is clear that the section must be construed according to the common law. The New York cases dealing with these Code "stays" are therefore directly applicable.**

Perhaps the leading case in New York on the question of the circumstances in which a suit may be lawfully stayed because of the pendency of another suit is *Dolbeer* v. *Stout,* 139 N. Y. 486 (1893). The plaintiff sued as the assignee of a claim on a contract. The defendant had previously instituted a suit against the plaintiff's assignor for damages for breach of the contract. The defendant then moved for a stay of the plaintiff's suit until determination of his suit against the plaintiff's assignor. The trial of the previous suit would obviously involve most if not all of the issues of law and fact in the second suit, and the trial court granted the defendant's motion. The Court of

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*This provision is *in addition* to Rules 106 and 107 of the New York Rules of Civil Practice providing for the *dismissal of the complaint* on the ground "that there is another action pending between the same parties for the same cause". These Rules obviously take the place of, and are in substance, the common-law plea in abatement. This ground of motion is not available where the other action pending is in a foreign court. *Squier* v. *Houghton,* 131 Misc. 129.

**In spite of the fact that we had made this point plain in our brief in the Court of Appeals the defendants' brief still argues that the New York cases under this statute providing for stays *"upon such terms * * * as may be just"* are not good authority here because they arose under a statute.

Appeals held that "the court had no power to stay the plaintiff's suit under these circumstances".

The opinion continues (p. 489):

> "We find no authority justifying the staying of proceedings in one cause until the determination of another cause pending in another court, *where the party against whom the stay is sought is neither a party nor privy to such other action, and would not be bound by any adjudication therein.*
>
> "Where the decision in one action will determine the right set up in another action, and the judgment on one trial will dispose of the controversy in all the actions, a case for a stay is presented, but the power exercised by the Special Term in this case is, so far as we can ascertain, without precedent, nor does it seem supported by reason. (See *Travis* v. *Myers*, 67 N. Y. 542; *Third Ave. R. R. Co.* v. *Mayor, etc.*, 54 *id.* 159; *People* v. *Wasson*, 64 *id.* 167; *De Groot* v. *Jay*, 30 Barb. 483.)
>
> "The plaintiff here, having no interest in and not being a party to the other action, could not intervene therein, and by the order in question the trial of this action may be postponed indefinitely, awaiting the trial and determination of another action, the result of which will in no way affect his rights."

In *Clark* v. *Vilas National Bank*, 22 A. D. 605 (1897), the action was for the foreclosure of mortgages. The defendant bank was impleaded as a subsequent judgment creditor. There was already pending *on appeal* a prior action in which the bank had obtained a judgment adjudging the transfer from the debtor to the plaintiff mortgagee to be void and for the purpose of defrauding the bank. The plaintiff in the foreclosure suit of course was a party to the earlier proceeding. The bank therefore applied for

an order to restrain the plaintiff from proceeding in the later foreclosure action. The order granting a stay was reversed. The court said (p. 607):

> "As the Vilas National Bank applied for the order in question on the same facts as are set out in the answers as a defense to the actions, ordinarily the proper procedure for the parties would be to try the questions raised by the pleadings in the actions in the usual way, rather than on affidavits on a motion to stay proceedings.
>
> "A stay of proceedings has, however, been sometimes granted in actions where a former action *between the same parties* is pending *which will determine the issues raised in the latter.* It has been held, however, that *such a stay will not be directed where it appears that, whatever be the result of the first action, a trial of the second will be necessary. If only a portion of the questions involved in the last action will be settled in the first, a stay will not be granted.* (See 2 Rumsey's Pr. 178, and cases cited; *The People* v. *Northern R. R. Co.,* 53 Barb. 98, 121; *Burlingame* v. *Parce,* 12 Hun, 149, 151.)"

These cases and many others show that the New York rule as to these statutory stays (as distinguished from strict pleas in abatement, where both the parties and the issues must be identical, and where also there must be the same plaintiff and the same defendant in both suits) is that such a stay of one suit until the final determination of the other will not be granted, even where the parties are the same, unless the decision in the preferred suit will completely dispose of the stayed suit,—in other words, un-

less the judgment in the preferred suit *will be binding* upon the parties in the stayed suit and will finally and conclusively dispose of *all* the issues in the stayed suit.

Thus in *Burke* v. *Betts*, 126 Misc. 601 (N. Y. Co. 1926), the court said (p. 603):

> "*Obviously, it is only where a decision in the action sought to be continued would finally determine all questions presented in the other action, that a proper case for the stay is presented.* (*Dolbeer* v. *Stout*, 139 N. Y. 486; *Rosenberg* v. *Slotchin*, 181 App. Div. 137.) True it is that a judgment in favor of the *plaintiffs* in the equity action would constitute a bar to the further prosecution of the law action. But a judgment in favor of the *defendant* in the equity action would still leave the law action to be tried and determined, in which the administrators might set up in addition to the defense constituting their cause, new defenses not averred in the equity complaint. It, therefore, follows that the final determination of the equity suit would not necessarily terminate the litigation between the parties. (See, also, *Raymore Realty Co.* v. *Pfotenhauer-Nesbit Co.*, 139 App. Div. 126; *Walkup* v. *Mesnick*, 110 *id.* 326; *Jones* v. *Leopold*, 95 *id.* 404.)"

In *Rosenberg* v. *Slotchin*, 181 A. D. 137, 138 (1917), the rule is stated as follows:

> "It is only where the decision in one action will determine all the questions in the other action, and the judgment on one trial will dispose of the controversy in both actions that a case for a stay is presented. (*Dolbeer* v. *Stout*, 139 N. Y. 486, 489; *Ogden* v. *Pioneer Iron Works*, 91 App. Div. 394,

396; *Consolidated Fruit Jar Company* v. *Wisner*, 38 *id.* 369, 375.)"*

See also:

Ogden v. *Pioneer Iron Works*, 91 A. D. 394 (1904), and

Swift v. *Finnigan*, 53 A. D. 76 (1900).

The case of *Jenkins* v. *Baker*, 91 A. D. 400 (1904), conclusively negatives the proposition that an anticipated simplification of issues is a sufficient reason for granting a stay. The defendant in the suit sought to be stayed was being sued in a representative capacity. In a prior action, *already on appeal in the Court of Appeals*, the same plaintiff had recovered judgment against the defendant in her individual capacity on the same subject of litigation. The defendant had appealed the other action on the ground that the decision of the Appellate Division was in conflict with a case formerly decided by the Court of Appeals. The alleged ground for the defendant's application for a stay in the later case was the assumed conflict between those two decisions. Reversing the order which granted the stay, on the ground that "whatever disposition may be made of the first case, this one must still be tried", the court further said (p. 402):

> "Such a conflict, if it exist, is no valid ground for the staying of the plaintiff's proceedings, *nor is there any warrant for such a stay to be found in the uncertainty of the law on any question, however unsettled the law and conflicting the decisions.*"

*This case is also authority for the rule that a motion to stay an action will not be granted *until the issues in it are complete*, because (p. 139) "until both actions are fully at issue it is impossible to say that a determination in one action will dispose of the other".

In the case at bar the issues which the defendants assert will be simplified are necessarily issues of law. But if a court is justified in granting stays of this sort in order to simplify issues of law, it can only be to save *itself* labor, since it is not to be supposed that the court is not able to make the *correct* decision itself. If a stay can be justified on this ground, then *any* delay which will tend to shorten the time and effort which the court must devote to the case could be justified; and *thousands of cases would constantly be subject to stay while the courts in which they were pending awaited the action of other courts which might "simplify the issues" and provide "valuable precedents".*

In *Bisalky Fan Co.* v. *Mosier & Summers, Inc.* 177 A. D. 372 (1917), the action was to foreclose a mechanic's lien for ventilating apparatus furnished. A partial defense was that the plaintiff, in furnishing the apparatus, had violated a patent owned by a third person. An action was pending in the United States District Court by that third person against the plaintiff. The defendants in the State suit therefore moved for a stay until the determination of the Federal suit. The stay was granted. Reversing this order the Appellate Division said:

> "If only a portion of the questions involved in the second cause of action will be settled in the first action, a stay will not be granted. (*Clark* v. *Vilas Nat. Bank*, 22 App. Div. 605; *Dolbeer* v. *Stout*, 139 N. Y. 486.)
>
> "The matter relating to the infringement is set up as a partial defense. Even though the infringement is established in the suit pending in the Federal court, it will not be decisive of this action. Under such circumstances a stay should not be granted. *What bearing the question of infringement may*

have and to what extent the question may be tried in this action, can better be determined when all the facts are before the court."

This case well illustrates the dangerous practice upon which the order appealed from here invites the courts to enter. Suppose the principle followed by the court below were generally adopted. Before the court in any case can decide what value the decision in another pending case will have in "simplifying" the issues in the case where a stay is sought, or what other bearing it will have upon them, the court will perforce have to satisfy itself as to what the issues are in both cases, *and it will have to do this in disregard of possible later amendments in the pleadings in either of the cases, and without the benefit of clarification of the issues in the light of the evidence introduced.* This, at best, calls for a hasty and haphazard prejudging of the case on the motion for a stay.

In the two cases now before this Court on this appeal the defendants persuaded the lower court to make a mere *guess* at what the issues might ultimately be in these cases and in the *Bond and Share* case, or to disregard what they might be, since the stay was granted *before any answer had been filed in either of the cases at bar*, or in the *Bond and Share* case. That action carries the stay order in this case to the ultimate limit of abuse, even if we ignore the authorities reviewed above, which show conclusively that the lower court had no right, in any circumstances, to stay these plaintiffs' cases in order to give the defendants an opportunity to prosecute another case against another defendant to final judgment in another court.

APPENDIX B

Plaintiffs' Right to Relief in Equity

The cases granting equitable relief against the enforcement of unconstitutional laws are apt to exemplify two wholly different factual situations. The first situation is most frequently illustrated in cases of threats to enforce penalties or start criminal proceedings. At all events, these cases are frequently examples of the right of equity to interfere to prevent injurious harassment by a multiplicity of suits, and so in them the right to relief will often depend on the existence of threats to enforce *at once or soon.* Otherwise there may be no present injury.

The second situation is that in which existing legislation usually *carrying other potentiality of injury than merely penal provisions* may or will not be presently enforced, but where the danger of eventual enforcement is nevertheless causing present injury. The plaintiffs' cases fall of course into this class. In cases of this sort, there being no threat of many imminent actions to enforce penalties, the question is whether the threat of *eventual* enforcement is causing *present* damage. If it is, the need for relief is precisely the same as if the "threat" were to enforce at once. Equity would belie its name if it made imminence of *action* the sole test of jurisdiction. The real test in *all* cases is imminence of irreparable injury—imminence of action being obviously merely a circumstance which is sometimes relevant in determining present or imminent injury.

Pierce v. *Society of Sisters,* (1924) 296 Fed. 928; (1925) 268 U. S. 510, is probably the leading case. This was a suit to enjoin the enforcement of a statute requiring

parents to send their children to public schools, *a statute which was not to go into effect for nearly three years after the institution of the suit.* Plaintiff, as the owner of a private school, complained that it was being presently injured by the mere existence of the statute and the announced determination of the officials to enforce it when and if it went into effect three years thereafter. Plaintiff alleged that it was presently injured because third persons, — as teachers and parents—were deterred from entering into their normal contract relationships with plaintiff by reason of the menace of the prospective operation of the statute. There were no threats of action against the plaintiff, a private school, because the statute contained no penalties against private schools: it did not even mention them. Its sole requirement was that parents should send their children to public school during certain months of the school year. And there was no threat or indication of action by any official to enforce the statute during the three year period before it was to go into effect.

The essential issue at bar was consequently directly involved in that litigation. There being no threat of imminent action, nor indeed, any possibility thereof, it was contended that equity should not entertain the action, because of "prematurity".

In demonstrating the unsoundness of this contention, the court of three judges (Gilbert, Bean and Wolverton, *JJ.*) through Judge Wolverton wrote:

> "One of the searching questions involved by the controversy is whether the causes have been prematurely brought. It will be noted that the act complained against is to become effective on and after the 1st day of September, 1926, more than 2 years

and 5 months hence. This presents one of the elements which must be considered, along with the rest, for ascertaining and determining whether, under the showing made, the complainants, or either of them, are meeting with irreparable and irremediable injury, which may not be as speedily and adequately met by such remedies as the law side of the court may afford. The principle that the remedy at law, if relied upon to supplant the equitable jurisdiction, must not only be plain, speedy, and adequate, but as adequate, complete, practical, and efficient to meet the ends of justice as that in equity, is so well settled as to need no citation of authorities. See, however, *Terrace* v. *Thompson, supra.*

* * *

"Now, although the time at which the act is to become effective is somewhat remote, it is quite apparent, from the allegations of the bills, the work of destruction of complainants' occupation has already set in. They are losing their patronage, *traceable directly to the fact that the act is a statute duly adopted and promulgated.* * * * The damage, of course, is irreparable, and compensation does not afford adequate relief. The injury being of a quality that is continuous and accelerating, it must be stayed if the ends of justice are to be met. * * *

"It cannot be questioned that a party affected by an unconstitutional act need not wait until some step is taken, under the act, that would affect him injuriously. 'One does not have to await the consummation of threatened injury to obtain preventative relief.' *Pennsylvania* v. *West Virginia,* 262 U. S. 553, 43 Sup. Ct. 658, 67 L. Ed. 1117. See, also, *Vicksburg Waterworks Co.* v. *Vicksburg,* 185 U. S. 65, 22 Sup. Ct. 585, 46 L. Ed. 808, where the court says:

> 'But it is one of the most valuable features of equity jurisdiction, to anticipate and prevent a threatened injury, where the damages would be insufficient or irreparable. *The exercise of such jurisdiction is for the benefit of both parties; in disclosing to the defendant that he is proceeding without warrant of law, and in protecting the complainant from injuries which, if inflicted, would be wholly destructive of his rights.*' * * *
>
> "However, considering that injunctive relief is appropriate to prevent threatened or impending irreparable injury and damage to one's property rights, it can hardly be further urged that it is inapplicable here because the suits were prematurely instituted. The present bills of complaint show, not only a threat to enforce the act when it becomes effective, *but that complainants are suffering irremediable injury now, which will continue with increasing detriment and damage until their principal occupations are destroyed* and they are deprived of their property and property rights. We think the suits were not prematurely brought."

In affirming this view of the law, this Court (*Pierce* v. *Society*, 268 U. S. 510, 536) first pointed out that there was a *present injury* to plaintiff's right to conduct its business; that is, a practical interference with its entering into long term contracts for supplies, equipment, teachers and pupils, all this arising from the *mere existence* of the statute and the public announcement of its validity by the prosecuting officers, with their intention to attempt to enforce it when it should go into effect years later.

The Court accordingly decided that there was a present injury which equity should relieve, saying succinctly:

> "The suits were not *premature*. The injury to appellees was *present* and very *real*, not a mere possibility in the remote future. If no relief had been possible prior to the effective date of the Act, the injury would have become irreparable. Prevention of impending injury by unlawful action is a well recognized function of courts of equity."

Terrace v. *Thompson*, 263 U. S. 197, is another case where the same question of "prematurity" was raised. There the law prohibited transfers and leases of land to aliens. The suit was brought by a citizen landowner, alleging that the law was deterring the leasing of his land to an alien Japanese. The claim of the defendant that the bill lacked equity was based on the fact that the only action which the officials contemplated taking under the law with respect to "the alleged contemplated lease" (which lease, it thus appears, the officials first learned of through the bill) would be a single criminal proceeding against the landowner, *if after* the proposed lease was consummated, an investigation should disclose its illegality.*

This contention of "prematurity" was described by this Court as follows:

> "The Attorney General questions the jurisdiction of the court to grant equitable relief even if the statute be unconstitutional. He contends that the appellants have a plain, adequate and speedy remedy at law; that the case involves but a single transaction, and that, *if the proposed lease is made*, the only remedy which the State has, so far as civil proceedings are concerned, is an escheat proceeding in which the validity of the law complained of may be

*The defendant so pledged himself in an affidavit filed in the lower court.

> finally determined; that an acquittal of the Terraces of the criminal offense created by the statute would protect them from further prosecution, and that Nakatsuka is liable criminally only upon his failure to disclose the fact that he holds an interest in the land."

In overruling this contention, this Court pointed out that the statute purported to operate directly to prevent the consummation of the proposed contract between the plaintiff and a third person and that if the statute was unconstitutional, this in itself constituted an injury to plaintiff's rights against which equity would relieve. The Court said:

> "The Terraces' property rights in the land include the right to use, lease and dispose of it for lawful purposes (*Buchanan* v. *Warley*, 245 U. S. 60, 74), and the Constitution protects these essential attributes of property (*Holden* v. *Hardy*, 169 U. S. 366, 391), and also protects Nakatsuka in his right to earn a livelihood by following the ordinary occupations of life. *Truax* v. *Raich, supra; Meyer* v. *Nebraska*, 262 U. S. 390. If, as claimed, the state act is repugnant to the due process and equal protection clauses of the Fourteenth Amendment, then its enforcement will deprive the owners of their right to lease their land to Nakatsuka, and deprive him of his right to pursue the occupation of farmer, and the threat to enforce it constitutes a continuing unlawful restriction upon and infringement of the rights of appellants, as to which they have no remedy at law which is as practical, efficient or adequate as the remedy in equity. And assuming, as suggested by the Attorney General, that after the making of the lease the validity of the law might be determined in pro-

ceedings to declare a forfeiture of the property to the State or in criminal proceedings to punish the owners, it does not follow that they may not appeal to equity for relief. No action at law can be initiated against them until after the consummation of the proposed lease. The threatened enforcement of the law deters them. In order to obtain a remedy at law, the owners, even if they would take the risk of fine, imprisonment and loss of property, must continue to suffer deprivation of their right to dispose of or lease their land to any such alien until one is found who will join them in violating the terms of the enactment and take the risk of forfeiture. Similarly Nakatsuka must continue to be deprived of his right to follow his occupation as farmer until a land owner is found who is willing to make a forbidden transfer of land and take the risk of punishment. The owners have an interest in the freedom of the alien, and he has an interest in their freedom, to make the lease. *The state act purports to operate directly upon the consummation of the proposed transaction between them,* and the threat and purpose of the Attorney General to enforce the punishments and forfeiture prescribed prevent each from dealing with the other. *Truax* v. *Raich, supra.* They are not obliged to take the risk of prosecution, fines and imprisonment and loss of property in order to secure an adjudication of their rights. The complaint presents a case in which equitable relief may be had, if the law complained of is shown to be in contravention of the Federal Constitution."

Euclid v. *Ambler Co.*, 272 U. S. 365, illustrates the same principle. The plaintiff, a landowner, alleged that a zoning law deterred prospective buyers for industrial and commercial uses, "because of the existence of the ordinance

and the necessity thereby entailed of conducting burdensome and expensive litigation in order to vindicate the right to use the land for lawful purposes".

The decision that the action was not premature was specifically based upon the allegations of the bill that the ordinance *of its own force* operated to destroy possibilities of sale and constituted a *present* invasion of property rights. The Court said (p. 386):

> "A motion was made in the court below to dismiss the bill on the ground that, because complainant [appellee] had made no effort to obtain a building permit or apply to the zoning board of appeals for relief as it might have done under the terms of the ordinance, the suit was premature. The motion was properly overruled. The effect of the allegations of the bill is that the ordinance *of its own force* operates greatly to reduce the value of appellee's lands and destroy their marketability for industrial, commercial and residential uses; and the attack is directed, not against any specific provision or provisions, but against the ordinance as an entirety. Assuming the premises, the existence and maintenance of the ordinance, in effect, constitutes a present invasion of appellee's property rights and a threat to continue it. Under these circumstances, the equitable jurisdiction is clear. See *Terrace* v. *Thompson*, 263 U. S. 197, 215; *Pierce* v. *Society of Sisters*, 268 U. S. 510, 535."

The same sort of alleged "prematurity" and lack of equity was also urged in *Vicksburg Waterworks Co.* v. *Vicksburg*, 185 U. S. 65. In that case the city was considering the possible construction or purchase of a plant in alleged infringement of plaintiff's franchise. As

in the case at bar, the city was proceeding to try a "test" suit in the state courts and was not threatening any steps to imperil plaintiff's rights *unless and until a favorable decision in the other suit was had.* The water company nevertheless brought suit in the Federal court for an injunction. The bill was dismissed for lack of equity, and in reversing the lower court this Court held that the suit was not premature and pointed out that the intervention of equity in such a case is for the benefit of both parties. It discloses to the defendant that he is proceeding or proposing to proceed without warrant of law and it protects the plaintiff from injurious impairment of his rights. The Court said:

> "It is further contended that the bill does not disclose any actual proceeding on the part of the city to displace complainant's rights under the contract, that mere apprehension that illegal action may be taken by the city cannot be the basis of enjoining such action, and that therefore the Circuit Court did right in dismissing the bill. We cannot accede to this contention. It is one often made in cases where bills in equity are filed to prevent anticipated and threatened action. But it is one of the most valuable features of equity jurisdiction, to anticipate and prevent a threatened injury, where the damages would be insufficient and irreparable. The exercise of such jurisdiction is for the benefit of both parties; in disclosing to the defendant that he is proceeding without warrant of law, and in protecting the complainant from injuries which, if inflicted, would be wholly destructive of his rights."

In *Pennsylvania* v. *West Virginia*, 262 U. S. 553 (1923), original suits were brought in the Supreme Court by the

States of Ohio and Pennsylvania to enjoin the State of West Virginia from enforcing a statute which, in the language of the Court, was "intended to compel the retention within the State [West Virginia] of whatever gas may be required to meet the local needs for all purposes." The suits were brought a few days after the statute became effective. West Virginia, the defendant, contended that the suits were premature since it did not appear that the privately owned corporations engaged in importing gas into the complainant States from West Virginia had threatened or intended to discontinue such importation of gas or that any order had been made or threatened by the West Virginia Public Service Commission affecting the right of these corporations to import gas into Ohio and Pennsylvania. The Court rejected this contention, because it found that the "situation when the suits were brought was such that the act *directly and immediately* would work a large curtailment of the volume of gas moving into the complainant States." The Court said (pp. 592-593):

> "The second question is whether the suits were brought prematurely. They were brought a few days after the West Virginia act went into force. No order under it had been made by the Public Service Commission; nor had it been tested in actual practice. But this does not prove that the suits were premature. Of course they were not so, if it otherwise appeared *that the act certainly would operate as the complainant States apprehended it would. One does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is certainly impending that is enough.*"

In the case at bar of course the plaintiffs are already suffering injury caused by the threat of eventual enforcement *is already being inflicted.*

Cases in the lower Federal courts illustrating the same principle are:

Darger v. *Hill,* (C. C. A. 9th, 1935) 76 F. (2d) 198;

Portland Ry., Light & Power Co. v. *Portland,* 201 F. 119 (1912);

Detroit Creamery Co. v. *Kinnane,* 264 F. 845 (1920).

The principles for which these cases stand and for which they have been here cited are reviewed and affirmed in the recent decision of this court in *Carter* v. *Carter Coal Company,* 298 U. S. 238.

APPENDIX C

The *Wheeling Bridge* Case and the Other Cases Cited by the Defendants in the Same Connection

We submit the following three propositions as elementary in the law of *res judicata*. An issue of law involved in an action or suit which has gone to a proper and lawful final judgment is as finally and conclusively determined *for the parties to that suit** as is an issue of fact similarly involved. The rule is the same with respect to default judgments as with respect to judgments after a trial on the merits. The rule is also the same even if the final judgment is the unappealed judgment of a court of first instance posited on a rule of law later held by a higher court (even the court of last appeal) to be erroneous.

The defendants, then, ask the Court to believe that there is an exception to this rule—namely, in the case where the question of law on which the unappealed earlier judgment necessarily depends is a question of constitutional law, and the later decision is that of this Court.

This is, indeed, a startling proposition. The defendants refer to no statement of it in the digests or treatises (we also find none), and they cite only three cases in support of it. These are all old cases, so that if they do really establish or support the proposition, the defendants have unquestionably made a discovery which has escaped all the juridical writers. We submit that the text writers are not at fault, and that the defendants have discovered something in the cases they cite which is not really there.

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*And also, of course, for their privies in law, though no such question is involved here.

The cases are: *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U. S. 421 (1855); *Mills* v. *Green*, 159 U. S. 651 (1895) and *Hatch* v. *Wallamet Iron Bridge Co.*, 27 Fed. 673 (1886).

In the *Wheeling Bridge* case the court had originally enjoined the operation of a bridge on the ground that it impeded commerce under the terms of an Act of Congress then in effect. *Congress subsequently enacted a new statute specifically authorizing the maintenance and operation of the bridge as a post-road.* The bridge later was blown down and defendants started the construction of a new bridge. The plaintiff sought to bring the construction of the new bridge within the terms of the earlier injunction. The court held that the construction and operation of the *new* bridge in compliance with the terms of the *new* statute would not be punished as a violation of the original injunction.

We submit that the *Wheeling Bridge* case in the aspect of it now under discussion is simply a case where a subsequent valid remedial statute* rendered lawful certain acts which theretofore had been unlawful. We believe that the *Mills* case (next to be discussed) shows clearly that no broader effect can be given to the decision in the *Wheeling Bridge* case than we have indicated.

In the *Mills* case the plaintiff obtained an order from the district court enjoining the defendant from performing any acts as supervisor of registration, on the ground that the statute of South Carolina providing for the registration

*Five Justices in all wrote opinions, but those who dissented from the majority decision that the old injunction was no longer effective, did so on the ground that *the Act of Congress was unconstitutional* or on other grounds having no bearing on the present question.

of voters for voting on a constitutional amendment was invalid and would result in the plaintiff's being denied his right to vote. The injunction was reversed by the circuit court of appeals. Shortly thereafter, and before the case was presented for decision by this Court, the elections were held as provided by the statute. This Court held, under the authority of the *Wheeling Bridge* case, that since the question of the plaintiff's injury had become moot it would not pass on the validity of the statute, and that consequently the bill must be dismissed.

In the *Hatch* case the only point *decided* was that the former decree of the court enjoining the construction of a proposed bridge, could not be attacked in a proceeding to dissolve the injunction. Everything else in the opinion is *obiter*. In this part of its opinion the court said:

> "I regarded the former bridge, and still regard it, as a very unwarrantable structure; but the *bridge which it is now proposed to build is much less objectionable, and, for all that appears, its construction may be no violation of the rule of law upon which the court acted under the theory by which it was originally governed in this matter.*"

The court then suggested that the matter might be properly brought before him for decision in a different proceeding, and in that connection said:

> "If the petitioners see proper to go on with the erection of the bridge, and parties interested in maintaining this decree desire to proceed by attachment against them for contempt, the court will require notice to be given to the parties, and will then proceed to examine into the question as to whether the decree should, under the circumstances, be en-

> forced. In this investigation two questions will be considered: First, whether the recent decision of the supreme court has superseded the decree, and changed the law on this subject; and second, whether this is the bridge in reference to which the injunction was issued."

It is clear from the foregoing language that the court was merely intending to state *what he conceived to be the questions which would be presented to him in the new proceedings.* He was not intimating how he would decide them, and the case therefore furnishes no support at all for the defendants' contention at bar.

We submit the following decisions of this Court as clearly negativing the defendants' theory of the *Wheeling Bridge* case.

In *Southern Pacific Railroad Company* v. *United States,* 168 U. S. 1, 48 the question was as to the conclusiveness of an earlier judgment establishing the right of a certain railroad company to certain land acquired by grant from the United States. In upholding the conclusiveness of the earlier judgment the Court made the following succinct summary of the principles underlying the sanctity of decrees of courts of competent jurisdiction, which is so fundamental in any sound system of jurisprudence:

> "The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question

> or fact once so determined must, as between the same parties or their privies, be taken as conclusively established so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them."

Authorities to the same effect could of course be multiplied endlessly. The fact that a decree may be based on errors of law makes it no less conclusive upon the parties to whom it applies. As the Court said in *American Express Co.* v. *Mullins*, 212 U. S. 311:

> "It was further suggested in the opinion of the judge of the Kentucky court that the Kansas judgment was wrong and in conflict with the decision of this Court and *American Express Company* v. *Iowa*, 196 U. S. 133. But as held in *Fauntleroy* v. *Lum*, 210 U. S. 230, 237.
>
> "A judgment is conclusive as to all the *media concludendi*, *United States* v. *California & Oregon Land Co.*, 192 U. S. 355; and it needs no authority to show that it cannot be impeached either in or out of the State by showing that it was based upon a mistake of the law."

See also *Rooker* v. *Fidelity Trust Company*, 263 U. S. 413, 415.

That a permanent decree of the court below in favor of the plaintiffs would preclude the successors in office of the present defendants from taking any action which the defendants could not take under the decree is also clear. See *New Orleans* v. *Citizens Bank,* 167 U. S. 371, 388; *Guntner* v. *Atlantic Coast Line Railroad Company,* 200 U. S. 273 (1906).

On the collateral point that an unappealed permanent decree of the court below in favor of the plaintiffs might be *modified* by the court in the event that the Act is upheld in the *Bond and Share* case, the defendants cite (p. 56) *United States* v. *Swift & Company,* 286 U. S. 106. We submit that this case not only does not support the defendants' contention, but implicitly repudiates it. The decree which the plaintiffs were there seeking to have modified contained *an express* provision that jurisdiction of the cause was retained for the purpose of taking such other action or adding such other relief as might become necessary or appropriate. The Court expressly distinguished such "continuing" decrees from decrees such as are sought by the plaintiffs in the cases at bar, in the following language:

> "* * * The distinction is between restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change, and those that involve the supervision of changing conduct or conditions and are thus provisional and tentative."

SUPREME COURT OF THE UNITED STATES.

Nos. 221 and 222.—October Term, 1936.

221	James M. Landis, et al., Petitioners, *vs.* The North American Company.	On Writs of Certiorari to the United States Court of Appeals for the District of Columbia.
222	James M. Landis, et al., Petitioners, *vs.* American Water Works & Electric Company, Incorporated.	

[December 7, 1936.]

Mr Justice Cardozo delivered the opinion of the Court.

The controversy hinges upon the power of a court to stay proceedings in one suit until the decision of another, and upon the propriety of using such a power in a given situation.

Respondents, non-registered holding companies, brought suit in the District Court for the District of Columbia to enjoin enforcement of the Public Utility Holding Company Act of 1935 (c. 687, 49 Stat. 803) on the ground that the Act in its entirety is unconstitutional and void. The complaint in No. 221 (the suit by the North American Company) was filed November 26, 1935; the complaint in No. 222 (the suit by the American Water Works & Electric Company) was filed the next day. By concession the two plaintiffs are holding companies within the meaning of the Act, and must register thereunder if the Act is valid as to them. One plaintiff, the North American Company, is at the apex of a pyramid which includes subsidiary holding companies as well as subsidiary operating companies, these last being engaged as public utilities in supplying gas and electricity to consumers in different states. The other plaintiff, American Water Works & Electric Company, is at the apex of another pyramid including like subsidiaries. The defendants in both suits (petitioners in this court) are the members of the Securities and Exchange Commission, the Attorney General of the United States, and the Postmaster General.

On November 26, 1935, the Commission filed a bill of complaint in the District Court of the United States for the Southern District

of New York to compel other holding companies, members of a different public utility system, to register with the Commission in accordance with the statute. At the beginning, the defendants were the Electric Bond & Share Company, the parent holding company, and five intermediate holding company subsidiaries. Sixteen other holding company subsidiaries were later added as defendants with the Government's consent. All the twenty-two defendants, parties to that suit, appeared and answered the complaint. All joined in a cross-bill contesting the validity of the Act and praying a decree restraining its enforcement. To give opportunity for full relief, the present petitioners appeared as cross-defendants, answering the cross-bill and opposing an injunction.

On December 7, 1935, the Attorney General filed a notice of motion in behalf of the petitioners for a stay of proceedings in Nos. 221 and 222, pending at that time in the District of Columbia. The petitioners had not yet submitted their answer to the bills, but their position as supporters of the statute in its application to respondents was made abundantly apparent. By the notice of motion it was shown that other suits to restrain the enforcement of the Act had been filed by other plaintiffs in the District of Columbia, and many more in other districts. The Government professed its anxiety to secure an early determination of its rights, and to that end pledged itself to proceed with all due diligence to prosecute the suit which it had chosen as a test. There were representations that the trial of a multitude of suits would have a tendency "to clog the courts, overtax the facilities of the Government, and make against that orderly and economical disposition of the controversy that is the Government's aim". Accordingly the court was asked to stay proceedings in the suits at bar "until the validity of said Act has been determined by the Supreme Court of the United States" in the Electric Bond and Share case, "or until that case is otherwise terminated". To that motion the plaintiffs filed an answer on December 12, 1935, contesting the power of the court to grant the requested stay, asserting that the questions to be passed upon in their suits were not identical with the questions presented in the test one, pointing out that the Act, even if valid as applied to some companies, might be invalid as applied to others, and dwelling upon the loss that they were suffering day by day while the menace of the Act obstructed their business and cast a cloud on its legality.

Upon the argument of the motion the Attorney General and the Securities and Exchange Commission announced that until the validity of the Act had been determined by this court in a civil suit which would be diligently prosecuted, neither the Attorney General nor the Commission would seek to enforce the criminal penalties of the Act, and that even after such determination they would not seek to exact penalties for earlier offenses. Written notice to that effect was given to all prosecuting officers. At the same time the Postmaster General announced that even if he had authority, he would not exclude any company from using the mails because of any violation of the Act pending the judicial determination of its validity by this court. Also, the Commission issued a regulation permitting a holding company, when registering, to reserve any legal or constitutional right and to stipulate that its registration should be void and of no effect in the event that such a reservation should be adjudged invalid or ineffective. Finally, the Attorney General offered to submit to a temporary injunction restraining the enforcement of the Act until the Electric Bond and Share case should be determined by this court. On the other side, the plaintiffs offered to consolidate their cases and thus dispose of them as one. They also offered, as we were informed upon the argument, to select a group of suits, not more than three or four, to be tried at the same time, with the understanding that any others would then be held in abeyance. These offers were rejected, and the Government stood upon its motion.

How many suits for like relief were pending in the same and other districts was the subject of oral representations when the motion was submitted. By consent, however, an affidavit by the Attorney General was afterwards supplied with a stipulation of counsel supplementary thereto. The affidavit and stipulation were accepted by the Court, and give precision to representations that would otherwise be vague. From the affidavit it appeared that, in addition to the suits at bar, forty-seven suits had been brought in thirteen districts, five of them, afterwards reduced to four, in the District of Columbia, the others elsewhere. From the stipulation it appeared, however, that none of the cases in other districts would be heard or determined on the merits. The bills were to be dismissed or process was to be quashed in so far as relief was demanded against any officials who are parties to the present suits, and this for the reason that as to all such defendants the venue

was improper. In a few suits there were to be decrees *pro confesso* against local officials who had been instructed by the Attorney General not to offer a defense. The number of pending suits was thus reduced to those in the District of Columbia, though there was a possibility, more or less uncertain, that there would be a renewal in that district of the suits begun elsewhere and discontinued or dismissed. Along with the affidavit and stipulation the Government submitted a copy of the complaint and the cross-bill in the suit against the Bond and Share Company.

Upon this showing the District Judge reached the conclusion that the motion should be granted, stating his reasons in an opinion. "A decision", he said, "by the Supreme Court in the Electric Bond and Share case, even if it should not dispose of all the questions involved, would certainly narrow the issues in the pending cases and assist in the determination of the questions of law involved." However, the granting of the motion would be conditioned upon diligent and active prosecution of the Government's suit. An order was made on January 9, 1936, staying all proceedings upon the terms and conditions stated in the opinion. From that order the Court of Appeals for the District of Columbia allowed a special appeal, which was heard in April, 1936 (four judges sitting), and decided in June. There were three opinions: an opinion by Mr. Justice Van Orsdel, concurred in by the Chief Justice; a separate opinion by Mr. Justice Groner; and a dissenting opinion by Mr. Justice Stephens. 85 F. (2d) 398. The first opinion states the question before the court to be whether or not the District Court had "abused its discretionary power in the control of its docket". Standing alone, this statement would seem to concede that there was power, the inquiry being merely whether the power had been discreetly exercised. The concession, if made, was speedily withdrawn. A few sentences later we are told that the power is confined to cases where the issues and the parties are the same. The separate opinion of Groner, J., treats the subject with greater flexibility. He suggests that after joinder of issue there may be a postponement of the trial if the court in the control of its own docket shall find that course expedient. He couples this with a statement that a stay so indefinite as the one before him would be too broad in any case. None the less, much latitude of judgment would have been left to the trial judge if the standards of that opinion had been adopted as a guide. But plainly they

were not. The order of the Court of Appeals in each of the two suits reverses the stay order and remands the cause "for further proceedings not inconsistent with the opinion of this court." Evidently the trial judge was expected to conform to doctrine expounded for his instruction in the course of an opinion, yet he would have difficulty in knowing which opinion to select. He might believe that comity or deference constrained him to submit to the opinion approved by two members of the reviewing court, since none had been accepted by the vote of a majority. At the very least there was a likelihood, and indeed almost a certainty, of confusion and embarrassment. In such circumstances the call is plain for a decision that will mark with greater clearness the bounds of power and discretion. We granted certiorari that this result might be attained.

Viewing the problem as one of power, and of power only, we find ourselves unable to assent to the suggestion that before proceedings in one suit may be stayed to abide the proceedings in another, the parties to the two causes must be shown to be the same and the issues identical. Indeed, counsel for the respondents, if we understand his argument aright, is at one with us in that regard, whatever may have been his attitude at the hearing in the courts below. Apart, however, from any concession, the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance. *Kansas City Southern Ry.* v. *United States*, 282 U. S. 760, 763; *Enelow* v. *New York Life Ins. Co.*, 293 U. S. 379, 382. True, the suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else. Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both. Considerations such as these, however, are counsels of moderation rather than limitations upon power. There are indeed opinions, though none of them in this court, that give color to a stricter rule. Impressed with the likelihood or danger of abuse, some courts have stated broadly that, irrespective of particular conditions, there is no power by a stay to

compel an unwilling litigant to wait upon the outcome of a controversy to which he is a stranger. *Dolbeer* v. *Stout*, 139 N. Y. 486, 489; *Rosenberg* v. *Slotchin*, 181 App. Div. (N. Y.) 137, 138; cf. *Wadleigh* v. *Veazie*, Fed. Cas. No. 17,031; *Checker Cab Mfg. Co.* v. *Checker Taxi Co.*, 26 F. (2d) 752; *Jefferson Standard Life Ins. Co.* v. *Keeton*, 292 Fed. 53. Such a formula, as we view it, is too mechanical and narrow. *Kansas City Southern Ry.* v. *United States, supra; Friedman* v. *Harrington*, 56 Fed. 860; *Amos* v. *Chadwick*, L. R. 9 Ch. Div. 459; 4 *id.* 869, 872. All the cases advancing it could have been adequately disposed of on the ground that discretion was abused by a stay of indefinite duration in the absence of a pressing need. If they stand for more than this, we are unwilling to accept them. Occasions may arise when it would be "a scandal to the administration of justice" in the phrase of Jessel, M. R. (*Amos* v. *Chadwick*, L. R. 9 Ch. Div. 459, 462), if power to coordinate the business of the court efficiently and sensibly were lacking altogether.

We must be on our guard against depriving the processes of justice of their suppleness of adaptation to varying conditions. Especially in cases of extraordinary public moment, the individual may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted. In these Holding Company Act cases great issues are involved, great in their complexity, great in their significance. On the facts there will be need for the minute investigation of intercorporate relations, linked in a web of baffling intricacy. On the law there will be novel problems of far-reaching importance to the parties and the public. An application for a stay in suits so weighty and unusual will not always fit within the mould appropriate to an application for such relief in a suit upon a bill of goods. True, a decision in the cause then pending in New York may not settle every question of fact and law in suits by other companies, but in all likelihood it will settle many and simplify them all. Even so, the burden of making out the justice and wisdom of a departure from the beaten track lay heavily on the petitioners, suppliants for relief, and discretion was abused if the stay was not kept within the bounds of moderation.

We are satisfied that the limits of a fair discretion are exceeded in so far as the stay is to continue in effect after the decision by the District Court in the suit against the Bond and Share Com-

pany, and until the determination by this court of any appeal therefrom. Already the proceedings in the District Court have continued more than a year. With the possibility of an intermediate appeal to the Circuit Court of Appeals, a second year or even more may go by before this court will be able to pass upon the Act. Whether the stay would have been proper if more narrowly confined will be considered later on. For the moment we fix the uttermost limit as the date of the first decision in the suit selected as a test, laying to one side the question whether it should even go so far. How the District Court in New York will decide the issues in that case is not to be predicted now. The Act may be held valid altogether, or valid in parts and invalid in others, or void in its entirety. Whatever the decision, the respondents are to be stayed by the terms of the challenged order until this court has had its say. They are not even at liberty, in case of an adjudication of partial invalidity, to bring themselves within the class adjudged to be exempt, though their membership in such a class may be uncertain or contested. Relief so drastic and unusual overpasses the limits of any reasonable need, at least upon the showing made when the motion was submitted.

We think the answer is inadequate that in the contingencies suggested the respondents will be at liberty to move to vacate the stay, and will prevail upon that motion if they can satisfy the court that its restraints are then oppressive. To drive them to that course is to make them shoulder a burden that should be carried by the Government. The stay is immoderate and hence unlawful unless so framed in its inception that its force will be spent within reasonable limits, so far at least as they are susceptible of prevision and description. When once those limits have been reached, the fetters should fall off. To put the thought in other words, an order which is to continue by its terms for an immoderate stretch of time is not to be upheld as moderate because conceivably the court that made it may be persuaded at a later time to undo what it has done. Disapproval of the very terms that have already been approved as reasonable is at best a doubtful outcome of an application for revision. If a second stay is necessary during the course of an appeal, the petitioners must bear the burden, when that stage shall have arrived, of making obvious the need. Enough for present purposes that they have not done so yet.

From the stay in its operation during the course of an appeal, we pass to the stay in its operation while the test suit is undetermined. That aspect of the order is subject to separate considerations and calls for separate treatment. The Government contends that a stay thus limited in duration is not unreasonably long, and that the respondents have been sufficiently protected against substantial loss or prejudice. The respondents deny that this is so, and insist that loss or prejudice, substantial in degree, is possible and even probable. We do not find it necessary to determine whether a stay to continue until the decision by the District Judge, and then ending automatically, would be moderate or excessive if viewed as of the time when the order differently conditioned was placed upon the files. Almost a year has gone by since the entry of that order, and in the intervening months many things have happened. All the parties have united in bringing these happenings to our notice and in inviting us to consider them. In the suit against the Bond and Share Company the facts have now been settled by stipulation; the briefs have been prepared; the case has been argued on the merits; and a decision may be expected within a reasonable time. With these happenings disclosed, a decision by this court, if directed to the fairness of the stay order as of the date of its entry and if based upon a record made up substantially a year ago, would have little relation to present day realities. "This court is a court of review and limits the exercise of its jurisdiction in accordance with its function." *Aero Transit Co.* v. *Georgia*, 295 U. S. 285, 294. To bring about a fitting correspondence between rulings and realities, there must be a new appraisal of the facts by the court whose function it is to exercise discretion, and an appraisal in the light of the situation existing and developed at the time of the rehearing. *Patterson* v. *Alabama*, 294 U. S. 600, 607; *Watts, Watts & Co.* v. *Unione Austriaca*, 248 U. S. 9, 21. Benefit and hardship will be set off, the one against the other, and upon an ascertainment of the balance discretionary judgment will be exercised anew.

In each suit, the decree of the Court of Appeals is reversed, the order of the District Court vacated, and the cause remanded to the District Court to determine the motion for a stay in accordance with the principles laid down in this opinion.

Ordered accordingly.

Mr. Justice McReynolds concurs in the result.